(19)

No. 95-865

In the Supreme Court of the United States

OCTOBER TERM, 1995

UNITED STATES OF AMERICA, PETITIONER

v.

WINSTAR CORPORATION, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

JOINT APPENDIX
VOLUME II OF II

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217
Counsel of Record for Petitioner

CHARLES J. COOPER
Shaw, Pittman, Potts, & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000
Counsel of Record for Respondents Winstar Corporation and the Statesman Group, Inc., et al.

JERRY STOUCK
Spriggs & Hollingsworth
1350 I Street, N.W.
Ninth Floor
Washington, D.C. 20005
(202) 898-5800
Counsel of Record for Respondent Glendale Federal Bank, FSB

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TABLE OF CONTENTS[1]

Page

WINSTAR

Court of Federal Claim Docket Entries, *Statesman Savings, et al.* v. *United States* (No. 90-CV-773) 1

Court of Federal Claims Docket Entries, *Winstar Corp., et al.* v. *United States* (No. 90-CV-8)..... 2

Court of Federal Claims Docket Entries, *Glendale Federal* v. *United States* (No. 90-CV-772)..... 3

Court of Appeals for the Federal Circuit Docket Entries, *Winstar Corp.* v. *United States* (No. 92-5164) 4

[1] The *en banc* and panel opinions of the Court of Appeals for the Federal Circuit and the opinions of the Court of Federal Claims are printed in the appendix to the petition for writ of certiorari and have not been reproduced here.

Complaint (Jan. 2, 1990) 6
FHLBB Memorandum from Kevin Aucello to Bob Brick (March 14, 1984) 37
Letter from McGladrey Hendrickson & Pullen to Harlan G. Halsne (May 10, 1984) 40
Financial Information Presentation (May 29, 1984) 43
FHLLB Memorandum from Nancy Shaen to Bob Brick (May 30, 1984) 46
FHLBB Memorandum from Robert Moore to Joseph Arendes (June 1, 1984) 49
FHLBB Memorandum from Harlan G. Halsne to J.J. Finn (June 28, 1984) 50
FHLBB Resolution No. 84-363 (July 6, 1984) .. 65
FHLBB Resolution No. 84-364 (July 6, 1984) .. 85
Assistance Agreement (July 12, 1984) 88
Combination Agreement and Plan of Merger (June 29, 1984 and July 12, 1984) 115
FHLBB Forbearance Letter (July 13, 1984) ... 123
Affidavit of E. Ted Yoch in Support of Plaintiff's Motion for Summary Judgment As To Liability (Mar. 27, 1990) 125

STATESMAN

Complaint (Aug. 15, 1990) 132
FHLBB Memorandum SP-37a, with attachment (March 7, 1986) 180
Excerpts from Instructions for Thrift Financial Reports (Jan. 1987) 183
FHLBB Acquisition Proposal (Jan. 8, 1988) ... 207
Excerpts from FHLBB Business Plan (Jan. 8, 1988) 228
Excerpts from Holding Company Application H-(e)1 (Feb. 12, 1988) 241
FHLBB S-Memorandum—Proposed FSLIC-Assisted Acquisition (Feb. 26, 1988) 248

FHLBB Memorandum from Darrel W. Dochow to John M. Buckley, Jr. (Mar. 11, 1988) 276
Excerpts from FHLBB Board Meeting Minutes, Closed Session (Mar. 11, 1988) 283
Merger Agreement And Plan Of Merger for Merger of First Federal Savings Bank into Statesman Bank (Mar. 11, 1988) 286
Merger Agreement And Plan Of Merger for Merger of Peoples Federal Savings and Loan Association into Statesman Bank (Mar. 11, 1988) 292
Merger Agreement And Plan Of Merger for Merger of The Perpetual Savings and Loan Association into Statesman Bank (Mar. 11, 1988) 298
Acquisition Agreement Between FSLIC As Receiver For First Federated Savings Bank and Statesman Bank (Mar. 11, 1988) 304
Assistance Agreement (March 11, 1988) 318
Regulatory Capital Maintenance Agreement (March 1988) 412
Bank Board Resolution No. 88-169 (March 11, 1988) 439
Letter from FHLBB to Statesman Bank Granting Forbearance (March 14, 1988) 475
Excerpts from *Oversight On The Condition Of The Financial Services Industry: Hearings Before The Senate Comm. On Banking, Housing, And Urban Affairs*, 100th Cong., 2d Sess. (May 19, 25, and 26, 1988) 481
Illustrative Thrift Financial Reports filed by Union Federal Savings Bank of Frankton and Coast Federal Bank (1988-1989) 491
Comptroller General Op. B-240860, with enclosure (Aug. 27, 1990) 507

Affidavit Of D. J. Noble In Support Of Plaintiff's Motion For Summary Judgment As To Liability (Sept. 5, 1990) 517

GLENDALE

Complaint (Aug. 15, 1990) 543
FHLBB Memorandum R 31b, Accounting For Goodwill In Accordance With GAAP Is Acceptable (Sept. 1, 1981)..... 571
Letter from Peat, Marwick, Mitchell & Co. to Glendale Board of Directors, with attachment (Nov. 19, 1981)..... 575
Excerpt from Agreement Of Merger Between Glendale Federal Savings And Loan Association and First Federal Savings And Loan (Nov. 12, 1981)..... 578
FHLBB Letter to Richard Fink (Nov. 16, 1981) 580
Letter from Glendale to Lawrence Hayes (Nov. 17, 1981)..... 583
FSLIC Memorandum, Financial Information Presentation (Nov. 18, 1981)..... 586
Supervisory Action Agreement (Nov. 19, 1981).. 587
Bank Board (Forbearance Letter) (Nov. 19, 1981) 602
FHLBB Resolution No. 81-710 (Nov. 19, 1981).. 605
FHLBB Resolution No. 81-712 (Nov. 19, 1981).. 611
Excerpts from Transcript Of Client-Furnished Tapes of FHLBB Meeting (Nov. 19, 1981) .. 613
Letter from Glendale to Milton Feinerman, with enclosures (Mar. 19, 1982)..... 618
OTS Thrift Bulletin 38-1 (Jan. 9, 1990)..... 625
Affidavit Of Raymond D. Edwards In Support Of Plaintiff's Motion For Summary Judgment As To Liability (Aug. 23, 1991) 628
Affidavit Of David T. Hansen In Support Of Plaintiff's Motion For Summary Judgment As To Liability (Sept. 3, 1991) 633

Affidavit Of Harold B. Shore In Support Of Plaintiff's Motion For Summary Judgment As To Liability (Sept. 4, 1991) 639
Glendale's Proposed Findings Of Uncontroverted Fact (Sept. 13, 1991) 643
Orders Allowing Certiorari 648

REGULATORY CAPITAL MAINTENANCE
AGREEMENT
AMONG
THE STATESMAN GROUP, INC.
Des Moines, Iowa,

AMERICAN LIFE AND CASUALTY
INSURANCE COMPANY
Fargo, North Dakota,

STATESMAN SAVINGS HOLDING CORP.
Des Moines, Iowa,

STATESMAN BANK FOR SAVINGS, FSB
Waterloo, Iowa

AND

THE FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION

DATED March ____, 1988

REGULATORY CAPITAL MAINTENANCE
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TABLE OF CONTENTS

		Page
Recitals		[415]
Agreement		[418]
§ 1.	Regulatory Capital Maintenance by the ACQUIRER and the ACQUIRING ASSOCIATION	[418]
§ 2.	Calculation of Required Regulatory Capital	[419]
§ 3.	Waiver of Net Worth Assistance	[419]
§ 4.	Guarantees by STATESMAN and AMERICAN LIFE	[419]
§ 5.	Covenants of the ACQUIRER, the ACQUIRING ASSOCIATION, STATESMAN and AMERICAN LIFE	[420]

§ 6. Irrevocable Proxies ..... [427]
§ 7. CORPORATION's Voting and Disposition Rights ..... [428]
§ 8. Duration of Agreement and of Certain Provisions ..... [432]
§ 9. Specific Performance ..... [432]
§ 10. Notices ..... [433]
§ 11. Rights and Forbearances ..... [434]
§ 12. Governing Law ..... [434]
§ 13. Entire Agreement, Severability ..... [434]
§ 14. Counterparts, Modifications, Headings [435]
§ 15. Successors and Assigns ..... [435]

Signature Page ..... [436]

Exhibit A: First Irrevocable Proxy ..... [437]
Exhibit B: Second Irrevocable Proxy ..... [438]

REGULATORY CAPITAL MAINTENANCE AGREEMENT

THIS AGREEMENT, dated March ____, 1988, is entered into by among The Statesman Group, Inc., a Delaware corporation (STATESMAN"), American Life and Casualty Insurance Company, a Dakota corporation wholly owned by STATESMAN ("AMERICAN LIFE"), Statesman Savings Holding Corp., a savings and loan company incorporated under the laws of the State of Iowa ("ACQUIRER"), Statesman Bank for Savings, FSB, Des Moines, Iowa, federally-chartered stock savings bank ("ACQUIRING ASSOCIATION"), and the Federal Savings and Loan Insurance Corporation ("FSLIC"), in its capacity as a corporate instrumentality and agency of the United States ("CORPORATION").

RECITALS

A. AMERICAN LIFE owns all of the outstanding voting parties of the ACQUIRER and AMERICAN LIFE is wholly owned by STATESMAN. Therefore, STATESMAN and AMERICAN LIFE "control" the ACQUIRER, as that term is used in Part 574 of the Regulations for the Federal Savings and Loan Insurance Corporation ("Insurance Regulations"), 12 C.F.R. Part 574 (1987).

B. By Resolution No. 88-____ dated March ____, 1988, Federal Home Loan Bank Board ("Bank Board") appointed the receiver ("RECEIVER") for First Federated Savings Bank, Palm Beach, Florida, a stock savings bank chartered under laws of the State of Florida ("CLOSED ASSOCIATION"). By Resolution No. 88-____, dated March ____, 1988, the

Bank Board has authorized the ACQUIRING ASSOCIATION to purchase and assume essentially all of the assets and liabilities of the CLOSED ASSOCIATION from the Receiver pursuant to the Acquisition Agreement of even date herewith between the RECEIVER and the ACQUIRING ASSOCIATION ("Acquisition Agreement").

C. By Resolution No. 88-____, dated March ____, 1988, the Bank Board has authorized the supervisory conversion of First Federal Savings Bank, Waterloo, Iowa, a federally-chartered Federal savings bank ("First Federal"), and the merger of First Federal with and into the ACQUIRING ASSOCIATION ("First Federal Merger"), pursuant to the Merger Agreement and Plan of Merger of the date herewith between First Federal and the ACQUIRING ASSOCIATION ("First Federal Merger Agreement").

D. By Resolution No. 88-____, dated March ____, 1988, the Bank Board has authorized the supervisory conversion of The Perpetual Savings and Loan Association, Waterloo, Iowa, a mutual savings and loan association chartered under the laws of the State of Iowa ("Perpetual"), and the merger of Perpetual with and the ACQUIRING ASSOCIATION ("Perpetual Merger"), pursuant to the Merger Agreement and Plan of Merger of even date herewith between Perpetual and the ACQUIRING ASSOCIATION ("Perpetual Merger Agreement").

E. By Resolution No. 88-____, dated March ____, 1988, the Bank Board has authorized the supervisory conversion of Peoples Savings and Loan Association, Waterloo, Iowa, a Federally-chartered mutual savings and loan association ("Peoples"), and the merger of Peoples with and into the ACQUIRING ASSOCIATION ("Peoples Merger"), pursuant to the Merger Agreement and Plan of Merger of even date herewith

between Peoples and the ACQUIRING ASSOCIATION ("Peoples Merger Agreement").

F. First Federal Perpetual and Peoples may be sometimes referred to herein individually as a "MERGED ASSOCIATION" and collectively as the "MERGED ASSOCIATIONS". The First Federal Merger, the Perpetual Merger and the Peoples Merger may be sometimes referred to herein individually as a "Merger" and collectively as the "Mergers", and the First Federal Merger Agreement, the Perpetual Merger Agreement and the Peoples Merger Agreement sometimes referred to herein individually as a "Merger Agreement" and collectively as the "Merger Agreements".

G. By Resolution No. 88-____, dated March ____, 1988, and Bank Board has authorized the purchase of all of the ACQUIRING ASSOCIATION's stock by the ACQUIRER, and the ACQUIRER has agreed to purchase all of the shares of common stock to be usually issued by the ACQUIRING ASSOCIATION.

H. The ACQUIRING ASSOCIATION, pursuant to the Acquisition Agreement, will succeed to substantially all of the rights, litigations, duties and liabilities of the CLOSED ASSOCIATION, and will acquire substantially all of the assets and property of every kind and character belonging to the CLOSED ASSOCIATION (Requisition").

I. The ACQUIRING ASSOCIATION, pursuant to the Merger agreements, will succeed to all of the rights, obligations, duties and liabilities of the MERGED ASSOCIATIONS, and will require all of the assets and property of every kind and character belonging to the MERGED ASSOCIATIONS.

J. The CORPORATION has decided, pursuant to § 6(f)(1)-(4) of the National Housing Act, as amended ("NHA"), U.S.C. § 1729(f)(1)-(4) (1982), to provide

financial assistance and indemnification in connection with the Acquisition and the Mergers. Such financial assistance and indemnification is set forth in an Assistance Agreement of even date herewith among the ACQUIRER, the ACQUIRING ASSOCIATION and the CORPORATION.

K. A condition to the obligation of the CORPORATION to provide financial assistance and indemnification as set forth in the Assistance Agreement is that the ACQUIRER, STATESMAN, AMERICAN LIFE and the ACQUIRING ASSOCIATION enter into an agreement in the form of this Agreement, pursuant to which the CORPORATION will receive certain assurances and rights with respect to maintenance of the regulatory capital of the ACQUIRING ASSOCIATION.

L. In consideration of the mutual promises contained herein, the parties enter into the following Agreement.

AGREEMENT

§ 1. *Regulatory Capital Maintenance by the ACQUIRER and the ACQUIRING ASSOCIATION.* So long as the ACQUIRER directly or indirectly controls the ACQUIRING ASSOCIATION, as the term ("control" is defined in Part 574 of the Insurance Regulations, 12 C.F.R. Part 574 (1987), or any successor regulation, as now or thereafter in effect, the ACQUIRER and the ACQUIRING ASSOCIATION shall cause the "regulatory capital," as defined in § 561.13 of the Insurance Regulations, 12 C.F.R. § 561.13 (1987), or any successor regulation, as now or hereafter in effect, of the ACQUIRING ASSOCIATION ("ACQUIRING ASSOCIATION's

Regulatory ("Capital") to be maintained at the level ("Required Regulatory Capital") required by § 563.13(b) of the Insurance Regulations, C.F.R. § 563.13(b) (1987), or any successor regulation, as now thereafter in effect ("Regulatory Capital Regulation"), without regard to any net worth assistance for which the ACQUIRING ASSOCIATION may qualify pursuant to § 406(f)(5) of the NHA, 12 U.S.C. § 1729(f)(5) (1982), as in effect now or as reenacted or amended to the future, and the regulations of the FSLIC issued pursuant to 406(f)(5), or any successor regulation, as now or hereafter in effect. The form of any capital infusion required by this § 1 must be acceptable to the Principal Supervisory Agent of the Bank Board, Des Moines, Iowa, or his designee ("P.S.A.").

§ 2. *Calculation of Required Regulatory Capital.* For purposes of this Agreement, any determination of the ACQUIRING ASSOCIATION's Required Regulatory Capital shall be as calculated in the FSLIC or the P.S.A., and shall include in the ACQUIRING ASSOCIATION's Regulatory Capital amounts permitted by the FSLIC to the Assistance Agreement and in the forbearances issued in connection with the transactions discussed herein.

§ 3. *Waiver of Net Worth Assistance.* The ACQUIRER and the ACQUIRING ASSOCIATION hereby waive any right to any net worth assistance for which the ACQUIRING ASSOCIATION may qualify pursuant to § 406(f)(5) of the NHA, 12 U.S.C. § 1729(f)(5) (1982), and the regulations of the FSLIC issued thereunder, or any successor institute or regulations, as now or hereafter in effect.

§ 4. *Guarantees by STATESMAN and AMERICAN LIFE.* So as the ACQUIRER shall be obligated pursuant to § 1, STATESMAN and AMERICAN

LIFE jointly and severally, in proportion to their initial contributions of capital to the ACQUIRER as selected in the percentages set forth opposite their signatures , hereby guarantee the performance of the ACQUIRER and the ACQUIRING ASSOCIATION under § 1 by hereby agreeing to infuse additional capital into the ACQUIRING ASSOCIATION in the same amounts as their initial contributions of capital to the ACQUIRER. Provided that STATESMAN and AMERICAN LIFE shall not be obligated under said guarantees to infuse additional capital worth more than $4,000.000 in the aggregate.

§ 5. *Covenants of the ACQUIRER, the ACQUIRING ASSOCIATION, STATESMAN and AMERICAN LIFE.* Unless the CORPORATION, in its sole discretion, consents or otherwise agrees, in either case or writing:

(a) The ACQUIRER will not, directly or indirectly, through one or more transactions, issue any voting priorities, stock options, warrants, or other instruments or mitigations convertible into voting securities of the ACQUIRER or which, upon the occurrence of one or more events, may acquire any voting rights with respect to the ACQUIRER, to any person or other than STATESMAN or AMERICAN LIFE, so long as AMERICAN LIFE is wholly owned by STATESMAN. If the CORPORATION consents or otherwise agrees to any such issuance, the ACQUIRER must disclose the provisions of this Agreement to such person or entity prior to such transaction and such person or entity must agree to be bound by the provisions of this Agreement other than § 4 (but including § 6(a) which would require such person or entity to deliver to the Secretary to the Bank Board ("Secretary") an revocable proxy in the form attached hereto as Exhibit A duly executed

by such person or entity, along with the certificate(s) presenting all of the shares of the voting stock of the ACQUIRER held by such person or entity, properly endorsed for transfer or accompanied by fully endorsed stock powers), as if person or entity were a signatory hereto;

(b) Neither STATESMAN nor AMERICAN LIFE shall assign, give, transfer, exchange, pledge or otherwise dispose of or encumber any shares of voting stock of the ACQUIRER, or any interest therein. If the CORPORATION consents or otherwise agrees to any such disposition or encumbrance, the proposed transferee or assignee of such shares or an interest therein must agree to be bound by the provisions of this Agreement, other than or the proposed pledgee or other holder of any right to insure such shares or an interest therein must agree to be bound to the provisions of this Agreement, other than § 4, in the event such person exercises such pledge or right, as if such transferee, assignee, pledgee, or holder were a signatory hereto. The provisions to which such transferee, assignee, pledgee or holder shall be bound shall include § 6(a), which would require the transferee, assignee, pledgee or holder to deliver to the Secretary an irrevocable proxy in the form attached hereto as Exhibit A duly executed by such transferee, assignee, pledgee or order, along with the certificate(s) or instrument(s) representing all of the shares of the voting stock of the ACQUIRER, or interests therein, held by such transferee, assignee, pledgee or order, properly endorsed for transfer or accompanied by fully endorsed stock powers or other instruments for assignment;

(c) STATESMAN and, so long as AMERICAN LIFE is only owned by STATESMAN, AMERICAN

LIFE shall, directly or indirectly, own not less than two-thirds of the outstanding voting power of the ACQUIRER, *provided* that in determining the outstanding voting power of the ACQUIRER, any stock options, warrants, or other instruments or obligations convertible into securities of the ACQUIRER or which, upon the occurrence of one or more events, may acquire any voting rights with respect to the ACQUIRER, shall be included in such determination;

(d) The ACQUIRER's charter and bylaws shall provide for the removal of directors at any time, with or without base:

(e) The ACQUIRER's charter and bylaws shall not require, nor shall the ACQUIRER be organized in any jurisdiction the law of which requires, the affirmative vote of more than two-thirds of the voting power of the ACQUIRER to approve any merger, consolidation, disposition of all or substantially all of the assets of the ACQUIRER or any similar extraordinary transaction involving the ACQUIRER ("Extraordinary Acquirer Transaction") or to amend its charter or bylaws;

(f) The ACQUIRING ASSOCIATION will not, directly or indirectly, through one or more transactions, issue any voting securities, stock options, warrants, or other instruments or obligations convertible into voting securities of the ACQUIRING ASSOCIATION or which, upon the occurrence of one or more events, may acquire any voting rights with respect to the ACQUIRING ASSOCIATION, to any person or entity other than the ACQUIRER. If the CORPORATION consents or otherwise agrees to any such issuance, the ACQUIRING ASSOCIATION must disclose the provisions this Agreement to such person or entity prior to such transaction and such person or entity must agree to be bound by

provisions of this Agreement other than § 4 (but including, the period from seven years after the date thereof (the date hereof being hereinafter referred to as the "Effective Date") to ten years after the Effective Date, § 6(b), which would require such person or entity to deliver to the Secretary to the Bank Board ("Secretary") an irrevocable proxy in the form attached hereto as Exhibit B duly executed by such person or entity, along with the certificate(s) representing all of the shares of the voting stock of the ACQUIRING ASSOCIATION held by such person or entity, properly endorsed for transfer or accompanied by full endorsed stock powers), as if such person or entity were a signatory hereto;

(g) The ACQUIRER shall not sell, assign, give, transfer, exchange, pledge or otherwise dispose of or encumber shares of voting stock of the ACQUIRING ASSOCIATION, or any interest therein. If the CORPORATION consents or otherwise agrees to any such disposition or encumbrance, the proposed transferee or assignee of such shares or an interest therein must agree to be bound by the provisions of this Agreement, other than § 4, or the proposed pledgee or other holder of any right to acquire such shares or an interest therein must agree to be bound by to the provisions of this Agreement, other than § 4, in the event the person exercises such pledge or right, as if such transferee, assignee, pledgee, or holder were a signatory hereto. The provisions to which such transferee, assignee, pledgee or other shall be bound shall include § 6(b), which would require transferee, assignee, pledgee or holder to deliver to the Secretary an irrevocable proxy in the form attached hereto as Exhibit B duly executed by such transferee, assignee, pledgee or holders, along with the certificate(s) or instrument(s) representing all of the shares

of the voting stock of the ACQUIRING ASSOCIATION, or interests therein, held by such transferee, assignee, pledgee or holder, properly endorsed for transfer or accompanied by fully endorsed stock powers or other instruments for assignment;

(h) The Acquirer shall not cause or permit, nor shall the ACQUIRING ASSOCIATION cause, any merger, consolidation, disposition of all or substantially all of the assets of the ACQUIRING ASSOCIATION or any similar extraordinary transaction involving the ACQUIRING ASSOCIATION ("Extraordinary Acquiring Association Transaction");

(i) The ACQUIRING ASSOCIATION's charter and laws shall not require, nor shall the ACQUIRING ASSOCIATION be organized in any jurisdiction the law of which requires, the affirmative vote of more than two-thirds of the voting power of the ACQUIRING ASSOCIATION to approve any Extraordinary Acquiring Association Transaction, or to amend its charter or bylaws;

(j) The ACQUIRING ASSOCIATION's bylaws shall provide that the shareholders have the right to remove any or all the directors of the ACQUIRING ASSOCIATION, with or without cause;

(k) The ACQUIRING ASSOCIATION will not, and the ACQUIRER will not cause the ACQUIRING ASSOCIATION to, declare or pay a dividend in any fiscal year (1) that would cause the ACQUIRING ASSOCIATION's Regulatory Capital to fall below the required Regulatory Capital level established in § 1, or (2) that exceeds 50 percent of the ACQUIRING ASSOCIATION's net income for the fiscal year as reflected on the ACQUIRING ASSOCIATION's quarterly financial reports to the Bank Board, without the prior written consent of the P.S.A. and the concurrence of the Executive Director of the

Office of Regulatory Policy, Oversight and Supervision of the Bank Board (the "ORPOS Director"), *provided* that any dividends permitted under these limitations may be deferred and paid in a subsequent year, but in no event may the ACQUIRING ASSOCIATION pay dividends that would reduce its regulatory capital below the Required Regulatory Capital level;

(l) Each instrument or certificate evidencing shares of voting securities of the ACQUIRER owned by STATESMAN or AMERICAN LIFE, and such securities transferred by STATESMAN or AMERICAN LIFE or any donee, transferee or assignee thereof, shall be stamped or imprinted with a legend in the following form:

> "The securities represented by this certificate (a) may not be sold, transferred or otherwise disposed of except in compliance with the restrictions contained in a Regulatory Capital Maintenance Agreement dated as of March ____, 1988 among the Company and the parties named therein (a copy of which Agreement is available for inspection at the principal offices of Company), (b) are subject to an irrevocable proxy as set forth in such Agreement, and (c) are subject to certain other terms, provisions, options and rights, including a prohibition on pledges and other restrictions on transfer included in such Agreement and the possibility of forfeiture."

(m) Each instrument or certificate evidencing shares of voting securities of the ACQUIRING ASSOCIATION owned by the ACQUIRER, and such securities transferred by the ACQUIRER or any donee, transferee or assignee thereof, shall be

stamped or imprinted with a legend in the following form:

> "The securities represented by this certificate (a) may not be sold, transferred or otherwise disposed of except in compliance with the restrictions contained in a Regulatory Capital Maintenance Agreement dated as of March ——, 1988 among the Association and the parties named therein (a copy of which Agreement is available for inspection at the principal offices of the Association), (b) are subject to an irrevocable proxy as set forth in such Agreement, and (c) are subject to certain other terms, provisions, options and rights, including a prohibition on pledges and other restrictions on transfer included in such Agreement and the possibility of forfeiture."

In the event of a violation of any of the covenants set forth in § 5, the CORPORATION shall have the right to proceed as set forth in § 7(a) or (b) as if the ACQUIRING ASSOCIATION's Regulatory Capital had, as of the date of such violation, fallen below the level specified in § 7. The ACQUIRER shall have the right to cure any violation of any covenant as is specified with regard to any regulatory capital deficiency; and

(n) The ACQUIRING ASSOCIATION shall notify the CORPORATION whenever the ACQUIRING ASSOCIATION's Regulatory Capital, as reported on the ACQUIRING ASSOCIATION's Monthly Report for any month filed with the Bank Board, is at or below three percent (3%). The president as well as the senior financial officer of each of STATESMAN and the ACQUIRING ASSOCIATION shall undertake to take affirmative action to remain informed so that this provision is effected. Notwithstanding the

provisions of §§ 5(a), (b) and (k) above, STATESMAN and AMERICAN LIFE shall not be precluded from issuing voting securities, stock options, warrants or other instruments obligations convertible into voting securities of STATESMAN or AMERICAN LIFE, or from selling, assigning, giving, transferring, arranging, pledging or otherwise disposing of or encumbering any shares of voting stock of STATESMAN or AMERICAN LIFE.

§ 6. *Irrevocable Proxies*

(a) *Irrevocable Proxy and Delivery of Stock Certificate by AMERICAN LIFE.* Concurrently with the execution of this Agreement, AMERICAN LIFE shall execute an irrevocable proxy in the form attached hereto as Exhibit A ("First Irrevocable Proxy", and deliver the First Irrevocable Proxy to the Secretary, along with the certificate representing all of the parties of the voting stock of the ACQUIRER, properly endorsed for transfer or accompanied by fully endorsed stock powers. Such delivery is for the purpose of effecting the terms of this Agreement, in particular § 7(a) hereof. The Secretary shall hold the First Irrevocable Proxy and such certificate on behalf of the CORPORATION. If additional voting securities are issued to STATESMAN or AMERICAN LIFE after the execution of this Agreement, STATESMAN or AMERICAN LIFE promptly shall deliver to the Secretary the certificate(s) representing such shares, properly endorsed for transfer or accompanied by fully endorsed stock powers. Until such time as the CORPORATION invokes its rights under § 7(a), subject to the other provisions of this Agreement, all rights related to the voting securities of the ACQUIRER owned by STATESMAN or AMERICAN LIFE shall be retained by STATESMAN or AMERICAN LIFE.

(b) *Irrevocable Proxy and Delivery of Stock Certificate by the ACQUIRER.* Seven years after the Effective Date, the ACQUIRER shall execute an irrevocable proxy in the form attached hereto as Exhibit B ("Second Irrevocable Proxy"), and deliver the Second Irrevocable Proxy to the Secretary, along with the certificate representing all of the shares of the voting stock of the ACQUIRING ASSOCIATION, properly endorsed for transfer or accompanied by fully endorsed stock powers. Such delivery is for the purpose of effecting the terms of this Agreement, in particular § 7(b) hereof. In exchange for such delivery, the First Irrevocable Proxy shall be returned to AMERICAN LIFE. The Secretary shall hold the Second Irrevocable Proxy and such certificate on behalf of the CORPORATION. If additional voting securities are issued to the ACQUIRER after the execution of the Second Irrevocable Proxy, the ACQUIRER promptly shall deliver to the Secretary the certificate(s) representing the shares, properly endorsed for transfer or accompanied by fully endorsed stock powers. Until such time as the CORPORATION invokes its rights under § 7(b), subject to the other provisions in this Agreement, all rights related to the voting securities of the ACQUIRING ASSOCIATION owned by the ACQUIRER shall be retained by the ACQUIRER.

§ 7. *CORPORATION's Voting and Disposition Rights.*

(a) If the ACQUIRING ASSOCIATION's Regulatory Capital shall, at the end of any month from the Effective Date seven years from the Effective Date, fall below two percent (2%) of "total liabilities," as defined in § 563.13(b)(1)(i) of the Regulatory Capital Regulation and as calculated by the FSLIC or the P.S.A. for such month, and such deficiency shall

not have been eliminated by the date of the filing of the ACQUIRING ASSOCIATION's Monthly Report for such month with the Bank Board, the CORPORATION, acting through the P.S.A., the Executive Director of the FSLIC ("FSLIC Director") or the ORPOS Director, shall have the right to send a notice ("Notice") to the ACQUIRER, STATESMAN and AMERICAN LIFE that the CORPORATION is invoking the provisions of this § 7(a). The ACQUIRER shall have 10 days from the date of receipt of the Notice in which to cure such deficiency. If such deficiency is not eliminated within such 10-day period, the CORPORATION, acting through the P.S.A., the FSLIC Director, or the ORPOS Director, in any case with the concurrence of the Office of General Counsel of the Bank Board, shall have the absolute right, in its sole discretion, to:

(1) vote pursuant to the First Irrevocable Proxy all voting securities of the ACQUIRER, including, without limitation, the exercise of such voting power:

(A) in favor of, and causing the taking of such steps as may be necessary to consummate, an extraordinary Acquirer Transaction, an Extraordinary Acquiring Association Transaction or the sale of any or all of the ACQUIRING ASSOCIATION'S voting securities, even if no value is received in respect of the voting securities or net assets of the ACQUIRING ASSOCIATION or the ACQUIRER; and/or

(B) to remove the board of directors of the ACQUIRER and/or the ACQUIRING ASSOCIATION; and/or

(C) to cause the ACQUIRER or the ACQUIRING ASSOCIATION to issue to the CORPORATION or another party or parties designated by

the CORPORATION, in its sole discretion, for nominal or no consideration, voting securities representing two-thirds of the voting power of the ACQUIRER or the ACQUIRING ASSOCIATION after such issuance; and/or

(2) dispose of any or all of the voting securities of the ACQUIRER, even if no value is received in respect of such securities.

In the event of any such transaction or disposition, owners of voting securities of the ACQUIRER or the ACQUIRING ASSOCIATION, as the case may be, shall be entitled to any consideration paid in respect of such securities less each such person's proportionate share of the costs associated with the transaction or disposition including, without limitation, any financial assistance provided by the CORPORATION in connection with such transaction or disposition.

(b) If the ACQUIRING ASSOCIATION's Regulatory Capital shall, at the end of any month after seven years from the Effective Date, fall below two percent (2%) of "total liabilities," as defined in § 563.13(b)(1)(i) of the Regulatory Capital Regulation and as calculated by the FSLIC or the P.S.A. for such month, and such deficiency shall not have been terminated by the date of the filing of the ACQUIRING ASSOCIATION's Monthly Report for such month with the Bank Board, the CORPORATION, acting through the P.S.A., the Executive Director of the FSLIC ("FSLIC Director") or the ORPOS Director, shall have the right to send a notice ("Notice") to the ACQUIRER, STATESMAN and AMERICAN LIFE that the CORPORATION is invoking the provisions of this § 7(b). The ACQUIRER shall have 10 days from the date of receipt of the Notice in which to cure such deficiency. If such deficiency is not eliminated within such 10-day period,

the CORPORATION, acting through the P.S.A., the FSLIC Director, or the ORPOS Director, in any case with the concurrence of the Office of General Counsel of the Bank Board, shall have the absolute right, in its sole discretion, to:

(1) vote pursuant to the Second Irrevocable Proxy all voting securities of the ACQUIRING ASSOCIATION, including, without limitation, the exercise of such voting power:

(A) in favor of, and causing the taking of such steps as may be necessary to consummate, an extraordinary Acquiring Association Transaction or the sale of any or all of the ACQUIRING ASSOCIATION'S voting securities, even to value is received in respect of the voting securities or net assets of the ACQUIRING ASSOCIATION; and/or

(B) to remove the board of directors of the ACQUIRING ASSOCIATION; and/or

(C) to cause the ACQUIRING ASSOCIATION to issue to the CORPORATION or another party or parties designated by the CORPORATION, in its sole discretion, for nominal or no consideration, voting securities representing two-thirds of the voting power of the ACQUIRING ASSOCIATION after such issuance; and/or

(2) dispose of any or all of the voting securities of the ACQUIRING ASSOCIATION, even if no value is received in respect of such securities.

In the event of any such transaction or disposition, owners of voting securities of the ACQUIRING ASSOCIATION shall be entitled to any consideration paid in respect of such securities less each such person's proportionate share of the costs associated with the transaction or disposition including, without limitation, any financial assistance provided by the CORPORATION in connection with such transaction or disposition.

§ 8. *Duration of Agreement and of Certain Provisions.*

(a) The obligations set forth in §§ 1-4 and 9-15 shall be perpetual.

(b) The obligations set forth in §§ 5(a)-(e), [illegible], 6(a) and 7(a) shall terminate seven years from the Effective Date.

(c) The obligations set forth in §§ 5(f)-(k), [illegible], 6(b) and 7(b) shall terminate ten years from the Effective Date.

§ 9. *Specific Performance.* The ACQUIRER, the ACQUIRING ASSOCIATION, STATESMAN and AMERICAN LIFE acknowledge and agree that the rights reserved to the CORPORATION hereunder are of a special, unique, unusual and extraordinary character, which gives them a peculiar value, the loss of which cannot be adequately or reasonably compensated for in damages in an action at law, and a breach by any of the ACQUIRER, the ACQUIRING ASSOCIATION, STATESMAN and AMERICAN LIFE of any of the provisions hereof will cause the CORPORATION irreparable injury and damage. In such event, the CORPORATION shall be immediately entitled, as a matter of right, to require of the defaulting party specific performance in all of the acts and undertakings required hereunder of such party including the obtaining of all requisite authorizations to execute or perform this Agreement and to obtain injunctive and other equitable relief in any court of competent jurisdiction including, without limitation, the United States District Court (for the District of Columbia) to prevent the violation or threatened violation of any of the provisions hereof. Neither this provision nor any exercise by the CORPORATION of rights to equitable relief or specific performance herein granted shall constitute a waiver of any other rights which it may have to damages or otherwise.

§ 10. *Notices.*

(a) Any notices or other communication required or permitted under this Agreement, unless otherwise specifically provided for, shall be deemed given when delivered if delivered personally or by U.S. Express Mail or commercial overnight courier service, or three business days after posting if sent by first class mail, postage prepaid, to a party at its address set forth below or at such other address as the party shall furnish in writing:

If to the ACQUIRER:

Statesman Savings Holding Corp.
Attn: David J. Noble, President
1400 Des Moines Building
Des Moines, Iowa 50309

If to the ACQUIRING ASSOCIATION:

Statesman Bank for Savings, FSB
Attn: Virgil Maxwell, President
1400 Des Moines Building
Des Moines, Iowa 50309

If to STATESMAN:

The Statesman Group, Inc.
Attn: D.J. Noble, President
1400 Des Moines Building
Des Moines, Iowa 50309

If to AMERICAN LIFE:

American Life and Casualty Insurance Company
Attn: Jon P. Newsome, President
P.O. Box 2507
Fargo, North Dakota 58108

If to the CORPORATION:

Federal Savings and Loan Insurance Corporation
Attn: Director, Financial Assistance Division
801 17th Street, N.W.
Washington, D.C. 20552

If to the P.S.A.:

Principal Supervisory Agent
Federal Home Loan Bank of Des Moines
907 Walnut Street
Des Moines, Iowa 50309

(b) Unless otherwise specifically provided for, this Agreement requires that notice be given within a certain period of time, notice shall be deemed given as of the date of testing.

§ 11. *Rights and Forbearances.* The rights, powers, and remedies given to the parties by this Agreement shall be in addition to all rights, powers, and remedies given by any applicable statute or rule of law. Any forbearance, failure, or delay by a party in exercising or partially exercising any such right, power, or remedy shall not preclude its further exercise.

§ 12. *Governing Law.* To the extent that Federal law does not control, this Agreement and the parties' rights and obligations under it shall be governed by the law of the State of Iowa. Nothing in this Agreement shall require any unlawful action or inaction by either party.

§ 13. *Entire Agreement, Severability,*

(a) This Agreement, together with any internation or understanding agreed to in writing by the parties, constitutes the entire agreement among the parties and supersedes any prior agreements and understandings of the parties in connection with the subject matter hereof.

(b) If any provision of this Agreement is invalid or unenforceable, all of the remaining provisions of this Agreement shall nevertheless remain in full force and effect and shall be binding upon the CORPORATION, the ACQUIRER, the ACQUIRING ASSOCIATION, STATESMAN and AMERICAN LIFE.

§ 14. *Counterparts, Modifications, Headings.*

(a) This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument, and any party execute this Agreement by signing any such counterpart.

(b) No amendment or modification of this Agreement shall be binding unless executed in writing by all the parties or their successors.

(c) Section headings are not to be considered part of this Agreement, are solely for convenience of reference, shall not affect the meaning or interpretation of this Agreement or any of its provisions.

§ 15. *Successors and Assigns.* All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective transferees, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement or caused it to be executed on their behalf by their duly authorized officers or agents.

ATTEST: FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

_____ By: /s/_____

_____ Its: _____

ATTEST: THE STATESMAN GROUP, INC. (60%)

_____ By: /s/_____

_____ Its: _____

ATTEST: AMERICAN LIFE AND CASUALTY INSURANCE COMPANY (40%)

_____ By: /s/_____

_____ Its: _____

ATTEST: STATESMAN SAVINGS HOLDING CORP.

_____ By: /s/_____

_____ Its: _____

ATTEST: STATESMAN BANK FOR SAVINGS, FSB

_____ By: /s/_____

_____ Its: _____

EXHIBIT A

FIRST IRREVOCABLE PROXY

The undersigned agrees to and does hereby grant to the Federal Savings and Loan Insurance Corporation, a corporate instrumentality of the United States ("FSLIC"), an irrevocable proxy pursuant to the provisions of _____ to vote, or to execute and deliver written consents or otherwise with respect to, all voting securities ("Stock") of Statesman Savings Holding Corp. ("Company") now owned or hereafter acquired by the undersigned as fully, and to the same extent and with the same effect, as the undersigned might or could do under any applicable laws or regulations governing the rights and powers of stockholders of a _____ corporation, in accordance with, as provided in, and for the time period specified in, a certain Regulatory Capital Maintenance Agreement, dated March __, 1988, among the undersigned, the Company, The Statesman Group, Inc., Statesman Bank for Savings, FSB ("Association") and the FSLIC. The undersigned hereby affirms that this proxy is given as a condition of said Regulatory Capital Maintenance Agreement and in connection with the acquisition of the Association by the Company and as such is coupled with an interest and is, therefore, irrevocable. This proxy may be exercised by the Principal Supervisory Agent of the Federal Home Loan Bank Board ("Bank Board"), Des Moines, Iowa, the Executive Director of the FSLIC, or the Executive Director of the Office of Regulatory Policy, Oversight and Supervision of the Bank Board, with the concurrence of the Office of the General Counsel of the Bank Board, at any meeting of the stockholders of the Company or in any action of such stockholders without a meeting. This Proxy shall terminate ten years from the effective date of the Regulatory Capital Maintenance Agreement in accordance with the terms thereof.

Dated this __ day of March, 1988.

AMERICAN LIFE AND CASUALTY INSURANCE COMPANY

By:_____

Its:_____

EXHIBIT B

SECOND IRREVOCABLE PROXY

The undersigned agrees to and does hereby grant to the Federal Savings and Loan Insurance Corporation, a corporate instrumentality of the United States ("FSLIC"), an irrevocable proxy pursuant to the provisions of _____ to vote, or to execute and deliver written consents or otherwise with respect to, all voting securities ("Stock") of Statesman Bank for Savings, FSB ("Association") now owned or hereafter acquired by the undersigned as fully, and to the same extent and with the same effect, as the undersigned might or could do under any applicable laws or regulations governing the rights and powers of stockholders of a Federal stock association, in accordance with, as provided in, and for the time period specified in, a certain Regulatory Capital Maintenance Agreement, dated March __, 1988, among the undersigned, American Life and Casualty Insurance Company, The Statesman Group, Inc., the Association and the FSLIC. The undersigned hereby affirms that this proxy is given as a condition of said Regulatory Capital Maintenance Agreement and in connection with the acquisition of the Association by the undersigned and as such is coupled with an interest and is, therefore, irrevocable. This proxy may be exercised by the Principal Supervisory Agent of the Federal Home Loan Bank Board ("Bank Board"), Des Moines, Iowa, the Executive Director of the FSLIC, or the Executive Director of the Office of Regulatory Policy, Oversight and Supervision of the Bank Board, with the concurrence of the Office of the General Counsel of the Bank Board, at any meeting of the stockholders of the Association or in any action of such stockholders without a meeting. This proxy shall terminate ten years from the effective date of the Regulatory Capital Maintenance Agreement in accordance with the terms thereof.

Dated this __ day of _____, 1988.

STATESMAN SAVINGS
HOLDING CORP.

By:_____

Its:_____

FEDERAL HOME LOAN BANK BOARD

Approval of
Organization of Statesman Bank for Savings, FSB, Waterloo, Iowa, and
Acquisition of Assets and Liabilities of First Federated Savings Bank, West Palm Beach, Florida, and Supervisory Conversions and Mergers of First Federal Savings Bank, Waterloo, Iowa, Peoples Federal Savings and Loan Association, Waterloo, Iowa, and the Perpetual Savings and Loan Association, Waterloo, Iowa

No. 88-169P
Date: March 11, 1988

WHEREAS, First Federated Savings Bank, West Palm Beach, Florida ("Closed Association"), is a state-chartered stock savings bank, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"); and

WHEREAS, The FSLIC has been appointed by the Federal Home Loan Bank Board ("Bank Board") as sole receiver ("Receiver") for the Association effective as described in Bank Board Resolution No. 88-167P, dated March 11, 1988; and

WHEREAS, The FSLIC as Receiver is authorized by § 406(c)(3)(B) of the National Housing Act, as amended ("NHA"), 12 U.S.C. § 1729(c)(3)(B) (1982), upon its appointment taking effect, to liquidate the Closed Association in an orderly manner or to make such other disposition of the matter as the FSLIC deems to be in the best interests of the Closed Association, its savers, and the FSLIC; and

WHEREAS, First Federal Savings Bank, Waterloo, Iowa ("First Federal"), is a federally-chartered mutual savings bank, the accounts of which are insured by the FSLIC; and

WHEREAS, Peoples Federal Savings and Loan Association, Waterloo, Iowa ("Peoples"), is a federally-chartered mutual savings and loan association, the accounts of which are insured by the FSLIC; and

WHEREAS, The Perpetual Savings and Loan Association, Waterloo, Iowa ("Perpetual"), is a mutual savings and loan association chartered under the laws of the State of Iowa, the accounts of which are insured by the FSLIC; and

WHEREAS, The FSLIC has been appointed by the Bank Board as sole conservator ("Conservator") for Perpetual effective as described in Bank Board Resolution No. 88-168, dated March 11, 1988; and

WHEREAS, First Federal, Peoples and Perpetual may be sometimes referred to herein individually as an "Acquired Association" and collectively as the "Acquired Associations", and the Closed Association and the Acquired Associations may be sometimes referred to herein individually as an "Association" and collectively as the "Associations"; and

WHEREAS, The Statesman Group, Inc., a Delaware corporation ("Statesman"), in connection with its bid to acquire the Associations, has proposed the incorporation and organization by the FSLIC of Statesman Bank for Savings, FSB, Waterloo, Iowa, ("New Federal"), as a new federal stock savings bank, pursuant to § 406(a) of the NHA, 12 U.S.C. § 1729(a) (1982), and, together with

its wholly owned subsidiary American Life and Casualty Insurance Company, a North Dakota corporation ("American Life") (collectively, the "Applicants"), has submitted an H-(e)1 Application, including Amendment Number 1 thereto ("Application") to the FSLIC, pursuant to § 408(e) of the NHA, 12 U.S.C. § 1720a(e) (1982), and § 574.7 of the Regulations for Savings and Loan Holding Companies ("Holding Company Regulations"), 12 C.F.R. § 574.7 (1987), for prior written approval (1) for Statesman Savings Holding Corp., a savings and loan holding company incorporated under the laws of the State of Iowa and owned by the Applicants ("Acquirer") to acquire the common stock of New Federal, and (2) for the Applicants to acquire control of the Acquirer; and

WHEREAS, The FSLIC has proposed that the Receiver transfer substantially all of the assets and liabilities of the closed Association to New Federal; and

WHEREAS, The Bank Board has considered a proposed plan of organization ("Plan of Organization") and exhibits thereto for New Federal (copies of which are in the Minute Exhibit File); and

WHEREAS, The Bank Board has considered a proposed subordinated debenture ("Subordinated Debenture") (a copy of which is in the Minute Exhibit File) to be issued by New Federal to the FSLIC; and

WHEREAS, The Bank Board has considered a proposed acquisition agreement ("Acquisition Agreement") between New Federal and the FSLIC as Receiver for the Closed Association, pursuant to which New Federal will purchase substantially all of the assets and assume substantially all of the liabilities of the Closed

Association, but would not assume any obligations to stockholders or holders of subordinated debt of the Closed Association ("Acquisition") (a copy of which Agreement is in the Minute Exhibit File); and

WHEREAS, The Bank Board has considered a proposed receiver's agreement ("Receiver's Agreement") between the FSLIC in its corporate capacity ("Corporation") and the FSLIC as Receiver for the Closed Association, pursuant to which the Corporation will purchase from the Receiver certain assets of the Closed Association not purchased by New Federal and assume certain liabilities of the Closed Association not assumed by New Federal (a copy of which agreement is in the Minute Exhibit File); and

WHEREAS, The FSLIC has proposed that the Receiver transfer substantially all of the assets and liabilities of the Closed Association to New Federal; and

WHEREAS, The boards of directors of New Federal and the Acquired Associations have adopted or will adopt by at least a two-thirds vote of their respective boards, and such associations (including Perpetual by the Conservator on its behalf), have executed, plans of merger evidenced by Merger Agreements and Plans of Merger ("Merger Agreements") (copies of which Agreements, as executed, are in the Minute Exhibit File), pursuant to which the Acquired Associations will merge with and into New Federal ("Mergers"); and

WHEREAS, The Applicants, on behalf of New Federal, have applied to the FSLIC, pursuant to § 563.22 of the Rules and Regulations for the FSLIC ("Insurance Regulations"), 12 C.F.R. § 563.22 (1987), for approval of an increase in the accounts of New Federal of an insurable type by reason of the Acquisition and the Mergers; and

WHEREAS, The Acquisition and the Mergers will be conditioned upon the execution of, and the Bank Board has considered, a proposed assistance agreement ("Assistance Agreement") among New Federal, the Acquirer, the Applicants and the Corporation, pursuant to which the Corporation will provide certain financial assistance to New Federal and indemnification to the Applicants, the Acquirer and New Federal to facilitate the Acquisition and the Mergers, and a related Promissory Note ("Note") (copies of which agreement and note are in the Minute Exhibit file); and

WHEREAS, The Bank Board has considered memoranda from Supervisory Agents of the Bank Board, Atlanta Georgia, and Des Moines, Iowa, dated March 2 and February 26, 1988, respectively, with which memoranda the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") has concurred, and memoranda from the Executive Director of the FSLIC, dated March 10, 1988, and from the General Counsel, dated March 11, 1988, together with accompanying attachments and exhibits (copies of which are in the Minute Exhibit File);

Chartering of New Federal Stock Association

NOW, THEREFORE, IT IS RESOLVED, That, upon the appointment of the Receiver by the Bank Board becoming effective, as provided in Resolution No. 88-167P, dated March 11, 1988, the FSLIC, under the authority of § 406(a) of the NHA, 12 U.S.C. § 1729(a) (1982) is authorized to organize a new federal stock savings bank to be known as Statesman Bank for Savings, FSB; and

RESOLVED FURTHER, That, pursuant to a proposal by the FSLIC consistent with the Application, in order to facilitate the liquidation of the Closed Association, the FSLIC's providing for the organization and incorporation of New Federal in accordance with the proposed Plan of Organization and the exhibits thereto is approved; and

Completion of Organization

RESOLVED FURTHER, That, pursuant to § 552.2-3 of the Rules and Regulations for the Federal Savings and Loan System ("Federal Regulations"), 12 C.F.R. § 552.2-3 (1987), the organization of New Federal shall be deemed complete when a duly authorized officer of New Federal has certified to completion of the steps required by paragraphs (A) through (O) of the proposed Plan of Organization; and

RESOLVED FURTHER, That if the conditions set forth in the immediately preceding resolving paragraph are not satisfied, the Federal Stock Charter of New Federal shall be cancelled and withdrawn and its corporate existence shall then be terminated; and

Authority of the FSLIC to Execute Documents for Organization of Statesman Bank for Savings, FSB

RESOLVED FURTHER, That the Executive Director or a Deputy Executive Director of the FSLIC, or a designee of any of them ("Director"), is hereby authorized to execute or approve on behalf of the FSLIC all documents necessary for the organization of New Federal, including those approved by the Bank Board, and such additional, modified, or substituted documents as the Director determines to be necessary or desirable

to organize or implement the organization of New Federal, *provided* that the form of any such document is approved by the Office of the General Counsel ("OGC"); and

Authority of Secretary or Assistant Secretaries to Attest Organizational Documents

RESOLVED FURTHER, That the Secretary or an Assistant Secretary, including any Assistant Secretary appointed for the purpose of implementing the transactions approved in this and ancillary resolutions, may attest or take other appropriate actions on behalf of the Bank Board, the FSLIC or the Receiver with respect to the organization of New Federal; and

Issuance of Forms

RESOLVED FURTHER, That all forms issued after completion of the organization of New Federal evidencing funds on deposit with New Federal shall be in the form approved by the appropriate Supervisory Agent of the Bank Board, Des Moines, Iowa ("Supervisory Agent"), and shall indicate that New Federal is a stock savings bank; and

Issuance of Charter and Bylaws

RESOLVED FURTHER, That a Charter in the form of the proposed Federal Stock Charter is hereby approved and shall be issued to New Federal, and the Secretary or an Assistant Secretary to the Bank Board may attest and date said Charter upon the direction of the OGC, and such Charter shall be deemed issued at the time of such dating and attesting by the Secretary or Assistant Secretary; *provided* that such Charter shall be deemed

to be amended to permit New Federal to invest in Statesman preferred stock; and

RESOLVED FURTHER, That the Bylaws of New Federal in the form proposed are hereby approved; and

Membership in the Federal Home Loan Bank

RESOLVED FURTHER, That, upon receipt of its Charter, New Federal shall be a member of the Federal Home Loan Bank of Des Moines ("Bank"), and the Secretary or an Assistant Secretary to the Bank Board shall issue a certificate of bank membership to New Federal; and

Insurance of Accounts

RESOLVED FURTHER, That insurance of accounts of New Federal is hereby approved, and the Secretary or an Assistant Secretary to the Bank Board is authorized to issue a certificate of insurance to New Federal and the FSLIC admission fee is waived, and the initial premium, if any, shall be paid upon determination by the Director, *provided* that the proposed Application for Insurance of Accounts and Agreement for Operating Policies are executed by New Federal in accordance with the Plan of Organization and returned to the FSLIC; and

Further Actions

RESOLVED FURTHER, That the Director, the General Counsel, and the Secretary or an Assistant Secretary to the Bank Board are hereby authorized and directed to take all other actions necessary or appropriate to further document or implement the incorporation

and organization of New Federal, its membership in the Bank, insurance of its accounts or any related matter contemplated in this Resolution; and

General Findings Concerning the Acquisition of Substantially All of the Assets and Liabilities of the Closed Association by New Federal

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, hereby finds and determines that: (1) the transfer of assets and liabilities of the Association provided for in the Acquisition Agreement and the Receiver's Agreement is the most desirable alternative, consistent with Bank Board and FSLIC policy, to the liquidation of the Association and the payment of insurance on its accounts, which would result in the loss of the savings and loan services provided by the Closed Association to the community it serves and the recovery by accountholders having uninsured funds and creditors of only ratable distributions from the liquidation of the assets of the Closed Association; (2) the execution and implementation of the Acquisition Agreement and the Receiver's Agreement are in the public interest and in the best interests of the Closed Association, its savers and creditors, and the Corporation; and (3) delay in the execution and implementation of the Acquisition Agreement and the Receiver's Agreement following the Receiver's taking possession of the Closed Association would prevent such a transfer of assets and liabilities and result in the liquidation of the Closed Association and the payment of insurance on its accounts; and

Approval of Purchase and Assumption Transaction

RESOLVED FURTHER, That the Bank Board hereby finds and determines that the transfer of substantially

all of the Closed Association's assets and liabilities to New Federal in accordance with § 406 of the NHA, 12 U.S.C. § 1729(c)(3)(13) (1982), and pursuant to the Acquisition Agreement should be effected without delay, is in the public interest and is in the best interests of the Closed Association, its savers and creditors, and the Corporation; and

RESOLVED FURTHER, That the Bank Board, pursuant to § 552.13 of the Federal Regulations, 12 C.F.R. § 552.13 (1987), hereby approves the transfer of substantially all of the Closed Association's assets and the assumption of substantially all of the Closed Association's liabilities to and by New Federal, pursuant to the Acquisition Agreement, and, as operating head of the FSLIC, further approves the resulting increase in New Federal's accounts of an insurable type, pursuant to § 563.22 of the Insurance Regulations, 12 C.F.R. § 563.22 (1987), *provided* that:

(1) The board of directors of New Federal shall authorize the execution of, and New Federal shall enter into, an agreement to purchase substantially all of the assets and assume substantially all of the liabilities of the Closed Association, in the form or substantially in the form of the proposed Acquisition Agreement, *provided* that the final form of such Acquisition Agreement has been approved by the OGC, and New Federal shall execute such other documents as may be necessary to effect such transfer of assets and liabilities of the Association to New Federal promptly upon the Receiver taking possession of the Association; and

(2) Not later than ninety (90) days following the effective date of the Acquisition Agreement ("Effective Date"), the Acquirer and New Federal shall submit to the Principal Supervisory Agent of the Bank Board, Des Moines, Iowa ("PSA") or the Supervisory Agent an independent certified public accountant's opinion that the Acquirer and New Federal have accounted for the acquisition in accordance with generally accepted accounting principles ("GAAP"); and

RESOLVED FURTHER, That the Bank Board, pursuant to § 552.15 of the Federal Regulations, 12 C.F.R. § 552.15 (1987), deems it necessary, in order to avert the imminent failure of the Closed Association, to waive or deem inapplicable certain provisions of § 552.13 of the Federal Regulations, 12 C.F.R. § 552.13 (1987), and hereby waives and deems inapplicable paragraph (f), (i), (j), (l) and (m) of § 552.13; and

RESOLVED FURTHER, That the Bank Board deems the Acquisition Agreement and the Application to be in substantial compliance with paragraphs (g) and (h) of § 552.13 of the Federal Regulations, 12 C.F.R. § 552.13 (1987); and

Authority for the Receiver to Transfer Assets and Liabilities of the Closed Association

RESOLVED FURTHER, That the proposed Acquisition Agreement and the proposed Receiver's Agreement are hereby approved and the FSLIC as Receiver for the Closed Association is hereby authorized to sell and transfer to New Federal substantially all of the assets and liabilities of the Closed Association

and to enter into an Acquisition Agreement and a Receiver's Agreement with respect to the Closed Association in the form or substantially in the form of each such proposed agreement, *provided* that the final form of each such agreement has been approved by the OGC; and

RESOLVED FURTHER, That stockholders and holders of subordinated debt of the Closed Association shall be entitled to receive payment only in accordance with the terms of the Acquisition Agreement; and

RESOLVED FURTHER, That the Special Representative(s) of the FSLIC as Receiver for the Closed Association, designated in or pursuant to Bank Board Resolution No. 88-167 dated March 11, 1988, is hereby authorized to execute, on behalf of the FSLIC as Receiver, an Acquisition Agreement and a Receiver's Agreement with respect to the Closed Association in the form or substantially in the form of each such proposed agreement, to execute all other documents necessary or desirable to implement the provisions of any such Acquisition Agreement and Receiver's Agreement or to complete the acquisition of substantially all of the assets and liabilities of the Closed Association by New Federal, and otherwise to implement the intent and purposes of said agreements and this Resolution, *provided* that the final form of each such agreement and document has been approved by the OGC; and

Authorization of the Corporation to Execute Agreements and Make Payments

RESOLVED FURTHER, That the Director is hereby authorized to execute on behalf of the Corporation a Receiver's Agreement in the form or substantially in

the form of such proposed agreement, and to execute all other documents and perform all provisions of the Receiver's Agreement and otherwise to implement the intent and purpose of said agreement, *provided* that the final forms of such agreement and other documents have been approved by the OGC; and

RESOLVED FURTHER, That the Corporation is authorized to make advances and pay expenses to or on behalf of the Receiver in accordance with the Receiver's Agreement; and

RESOLVED FURTHER, That the FSLIC in its corporate capacity is authorized to pay all necessary or appropriate expenses incurred by, or on behalf of, the Operations and Liquidations Division, Office of the FSLIC, in preparation for the appointment of the FSLIC as receiver for the Closed Association, *provided* that no such expenditures to be made by the FSLIC in its corporate capacity shall extend to services rendered or goods received after the date and time the FSLIC as Receiver takes possession of the Closed Association; and

Supervisory Merger Conversions of the Acquired Associations

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, finds that:

(1) Each Acquired Association's liabilities exceed its assets, as calculated under generally accepted accounting principles on a going concern basis;

(2) Following the supervisory conversion and merger of each Acquired Association with and into New Federal

and the Acquisition, the resulting association will be a viable entity; and

RESOLVED FURTHER, That the conversion of each Acquired Association from the mutual to the stock form of organization as a part of a supervisory transaction may be and hereby is approved under § 5 or the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. § 1464 (1982), and, pursuant to the findings of this Resolution, good cause exists for a waiver of the requirements of Part 563(b) of the Rules and Regulations of the FSLIC ("Insurance Regulations"), 12 C.F.R. Part 563b (1987); and

RESOLVED FURTHER, That, pursuant to the exception provisions in §§ 563b.1(a) and 563.20 of the Insurance Regulations, 12 C.F.R. §§ 563.1(a) and 563b.20 (1987), the terms of this Resolution, and not the requirements set forth in part 563b of the Insurance Regulations, 12 C.F.R. § 563b (1987), shall govern the conversion of each Acquired Association; the Acquired Associations shall not be converted in accordance with Subpart C of Part 563b; and § 563b.10 of the Insurance Regulations shall not apply, except that, pursuant to § 563b.10(c)(2), the protection of § 563b.(i)(3) of the Insurance Regulations, 12 C.F.R. § 563b3.(i)(3) (1987), shall apply to New Federal and its affiliates, but only for one year following thee Effective Date; and

Emergency Thrift Acquisition Findings

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, hereby determines with respect to the Acquisition and the Mergers that:

1. Severe financial conditions exist which threaten the

stability of a significant number of institutions, the accounts of which are insured by the FSLIC ("insured institutions"), and of insured institutions possessing significant financial resources;

2. Each of the Associations is a failing institution that is eligible for assistance pursuant to § 406(f) of the NHA, 12 U.S.C. § 1729(f) (1982);

3. The procedures used by agents of the FSLIC to solicit practicable offers from prospective purchasers or merger partners both qualified and capable of acquiring the assets and liabilities of each of the Associations comply with the standards of § 408(m) of the NHA, 12 U.S.C. § 1730(m) (1982);

4. The Bank Board, in making the findings and issuing the approvals contained in this Resolution, has given full and due consideration to the need to minimize the cost of financial assistance, the maintenance of specialized depository institutions, and the priorities and purposes of § 408(m) of the NHA, 12 U.S.C. § 1730a(m) (1982);

5. The Acquisition and the Mergers would lessen the risk to the FSLIC;

6. No other offer was made to acquire all of the Associations;

7. No offeror both qualified and capable of acquiring any of the Associations made an offer to acquire any of the Associations in a form and with conditions acceptable to the FSLIC the estimated cost of which was within the lesser of 15 percent or $15 million of the cost of the offer of the Applicants to acquire all the Associations;

8. The offer of the Applicants to acquire all the Associations presents the lowest expense and least risk to the FSLIC of any proposal submitted for any of the Associations;

9. The offer of the Applicants is substantially less costly to the FSLIC than any alternative proposal or proposals; and

RESOLVED FURTHER That the Bank Board, as operating head of the FSLIC, hereby approves the Acquisition and the Mergers pursuant to § 408(m) of the NHA, 12 U.S.C. § 1730a(m) (1982); and

Approval of Mergers and Increase of Insurable Accounts

RESOLVED FURTHER, That the Mergers are hereby approved and authorized, and the application for approval of the Mergers is hereby deemed to be in substantial compliance with the provisions of § 546.2 of Federal Regulations, 12 C.F.R. § 546.2 (1987), and the increase in the accounts of the New Federal of an insurable type by reason of the Mergers is hereby approved pursuant to § 563.22 of the Insurance Regulations, 12 C.F.R. § 563.22 (1987); *provided* that:

(1) Within five (5) days following the date and time at which the Acquisition and the Mergers become effective ("Effective Date"), New Federal shall submit to the Supervisory Agent an opinion of counsel, in a form approved by the OGC, stating that the Acquisition and the Mergers have been consummated in accordance with the Acquisition Agreement, the Merger Agreements, the charter and bylaws of New Federal, this Resolution, and applicable law; and

(2) Within sixty (60) days following the Effective Date, or within such period of time as is permitted in writing by the Supervisory Agent, New Federal shall submit evidence to the FSLIC or an agent thereof that New Federal has given notice in writing, in a form approved by the OGC, to each accountholder who had an account in New Federal or an Association prior to the Effective Date, and the total of whose withdrawable accounts in New Federal will exceed the sum of $100,000 as a result of the Acquisition and the Mergers, (a) of the effect of the Acquisition and the Mergers on the extent of the accountholder's insurance coverage, and (b) that accounts acquired by New Federal from the Associations shall have separated insurance that shall terminate at the end of six (6) months from the Effective Date, or, in the case of certificate accounts, at the earliest maturity date of such accounts following six (6) months after the Effective Date; and

(3) On or before the Effective Date, New Federal shall have entered into the Merger Agreements; *provided* that the final forms of such agreements have been approved by the OGC; and

RESOLVED FURTHER, That the Bank Board, pursuant to § 552.15 of the Federal Regulations, 12 C.F.R. § 552.15 (1987), deems it necessary, in order to avert the imminent failure of each Acquired Association, to waive or deem inapplicable certain provisions of § 552.13 of the Federal Regulations, 12 C.F.R. § 552.13 (1987), and hereby deems inapplicable and waives paragraph (f), (i), (j), (l) and (m), of § 552.13; and

Grounds for Financial Assistance

RESOLVED FURTHER, That the Bank Board, as

operating head of the FSLIC, hereby determines, pursuant to §§ 406(f)(1)-(4) of the NHA, 12 U.S.C. §§ 1729(f)(1)-(4) (1982), that (1) financial assistance and indemnifications by the FSLIC are necessary to prevent the default of each Association and to facilitate the Acquisitions and the Mergers, and (2) the amounts of such assistance and indemnifications to be provided in accordance with the terms and conditions of the proposed Assistance Agreement would not exceed the amount reasonably necessary to save the cost of liquidating the Associations, including the payment of their insured accounts; and

RESOLVED FURTHER, That the proposed Assistance Agreement and Note are hereby approved, and the Director or the Director, Financial Assistance Division, Office of the FSLIC, or his designee ("FAD Director"), is hereby authorized to execute on behalf of the FSLIC an agreement in the form or substantially in the form of the proposed Assistance Agreement, and a promissory note in the form or substantially in the form of the proposed Note, *provided* that the final forms of such agreement and such note have been approved by the OGC, and

RESOLVED FURTHER, That the Director or the FAD Director is authorized to take such further actions as may be necessary or appropriate to exercise the rights and fulfill the obligations of the FSLIC contained in the Assistance Agreement and the Note; and

Subordinated Debt

RESOLVED FURTHER, That the Bank Board, as the operating head of the FSLIC, finds that the Acquisition and the Mergers constitute a supervisory situation

within the meaning of § 563.8-1 of the Insurance Regulations, 12 C.F.R. § 563.8-1 (1987), and New Federal's issuance of such Subordinated Debenture is hereby approved by the Bank Board, as operating head of the FSLIC, pursuant to § 563.8-1 of the Insurance Regulations 12 C.F.R. § 563.8-1 (1987); and

Prevention of Probable Failure

RESOLVED FURTHER, That the Bank Board finds that approval of the Acquisition, the Mergers and the acquisition of control of New Federal by the Acquirer pursuant to this Resolution is necessary to prevent the probable failure of each Association; and

Supervisory Acquisition and Mergers

RESOLVED FURTHER, That the Bank Board finds and determines that the Acquisition and the Mergers pursuant to this Resolution are instituted for supervisory reasons; and

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, finds that the acquisition of each Association by New Federal by reason of the Acquisition and the Mergers are acquisitions under § 406(f) of the NHA, 12 U.S.C. 1729(f) (1982), and is deemed a supervisory case; and

Forbearances

RESOLVED FURTHER, That the Secretary or an Assistant Secretary to the Bank Board is authorized and directed to send to New Federal a letter concerning supervisory forebearances by the Bank Board and the FSLIC with respect to certain regulatory requirements (a copy of which forbearance letter is in the Minute

Exhibit File), *provided* that the final form of such letter shall be approved by the OGC; and

Employment Contracts

RESOLVED FURTHER, That, pursuant to § 563.39(b)(5) of the Insurance Regulations, 12 C.F.R. § 563.39(b)(5) (1987), all obligations of each Acquired Association under any employment contracts of each Acquired Association are hereby terminated by the Bank Board; and

Accounting

RESOLVED FURTHER, That the Acquisition and the Mergers shall be accounted for, and New Federal shall report to the Bank Board and the FSLIC, in accordance with generally accepted accounting principles prevailing in the savings and loan industry, as accepted, modified, clarified, or interpreted by applicable regulations of the Bank Board and the FSLIC, except to the extent of the following departures from generally accepted accounting principles:

(a) Twenty-one million dollars of the initial contribution by the Corporation to New Federal, and five million dollars of the principal amount of the Subordinated Debenture issued to the FSLIC, pursuant to § 6 of the Assistance Agreement, shall be credited to the regulatory capital account of New Federal; and

(b) The value of any unidentifiable intangible assets resulting from accounting for the Acquisition and the Mergers in accordance with the purchase method of accounting may be amortized by New Federal over a period not in excess of

twenty-five (25) years by the straight line method; and

RESOLVED FURTHER, That, no later than ninety (90) days following the Effective Date, New Federal shall furnish an analysis, accompanied by a concurring opinion from its independent certified public accountants (which will indicate that the Acquisition and the Mergers were consummated in accordance with generally accepted accounting principles except as otherwise authorized by the Bank Board), satisfactory to the Supervisory Agent and the ORPOS, which shall (a) specifically describe, as of the Effective Date, any intangible assets, including goodwill and the discount and premiums arising from the Acquisition and the Mergers, to be recorded on New Federal's books, and (b) substantiate the reasonableness and conformity with regulatory requirements of the amounts attributed to intangible assets, including goodwill and the discount and premiums, and the related amortization periods and methods; and

Tax Certification

RESOLVED FURTHER, That the Bank Board finds and hereby certifies that the ground set forth in § 5(d)(6)(a)(i) of the HOLA, 12 U.S.C. § 1464(d)(6)(A)(i) (1982), exists with respect to the each Association in that the each Association is insolvent in that its assets are less than its obligations to its creditors and others, including its withdrawable accountholders; and

RESOLVED FURTHER, That the Bank Board finds that the record before it contains nothing to show, or from which it could be inferred, that any Association has intentionally placed itself in the position of being insol-

vent for the purpose of obtaining any tax advantages; and

RESOLVED FURTHER, That the Secretary or an Assistant Secretary to the Bank Board is hereby authorized and directed to issue and send to New Federal a letter with respect to each Association certifying on behalf of the Bank Board the matters set forth in the two immediately preceding resolving paragraphs, and the Secretary or Assistant Secretary is hereby authorized to provide copies of such letters to any agency of the United States upon request; and

Secondary Reserve

RESOLVED FURTHER, That the FSLIC hereby provides that the pro rata share, if any, of each Association in the statutorily prescribed amount defined by § 404(e)(2)(D) of the NHA, 12 U.S.C. § 1727(e)(2)(D) (1982), shall be transferred to New Federal, effective as of the Effective Date; and

Federal Home Loan Bank Stock and Membership

RESOLVED FURTHER, That the transfer to New Federal of the stock in the Bank of each Acquired Association and of the stock in the Federal Home Home Loan Bank of Atlanta, of the Closed Association, is approved, effective as of the Effective Date, and that, upon such transfer, the memberships of the Associations in the respective Federal Home Loan Banks shall cease; and

Cancellation of Certificates of Insurance and Federal Charters

RESOLVED FURTHER, That the Secretary or an

Assistant Secretary to the Bank Board is hereby directed to cancel each Association's certificate of insurance upon its surrender to the FSLIC; and

RESOLVED FURTHER, That as of the Effective Date, the federal charters of First Federal and Peoples will be automatically cancelled; and

RESOLVED FURTHER, That First Federal and Peoples are hereby directed to surrender their charters to the Bank Board on the Effective Date; and

Holding Companies

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, has taken into consideration the financial and managerial resources and future prospects of the Applicants and New Federal and the convenience and needs of the communities to be served by New Federal; and

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, finds that the acquisition of control proposed in the Application satisfies the approval standards of § 408(e)(2) of the NHA, 12 U.S.C. § 1730a(e)(2) (1982); and

RESOLVED FURTHER, That the acquisition of control of New Federal by the Applicants is hereby approved pursuant to § 408(e)(1)(B) of the NHA, 12 U.S.C. § 1730a(e)(1)(B) (1982), § 408(m) of the NHA, 12 U.S.C. § 1730a(m) (1982) and § 574.3 of the Insurance Regulations, 12 C.F.R. § 574.3 (1987), *provided* that:

1. The Applicants and the Acquirer shall obtain the approval of their respective boards of directors for consummation of the transactions set forth herein, and shall

execute or authorize the execution of all documents necessary to consummate such transactions in accordance with all applicable statutory and regulatory requirements and the conditions imposed by this Resolution, and shall provide to the OGC satisfactory evidence of all required approvals and authorizations by such boards of directors;

2. The issuance and sale of New Federal's stock to the Acquirer in accordance with the terms of the proposed Plan of Organization as executed shall be completed promptly upon the issuance of a Federal stock charter to New Federal;

3. The stock issued by New Federal shall be evidenced by certificates in the form of the proposed certificate, which is hereby approved (a copy of which is in the Minute Exhibit File), including a statement to the effect that the shares are restricted as to transfer as prescribed in the Regulatory Capitol Maintenance Agreement among the Applicants, the Acquirer, New Federal and the Corporation;

4. The Acquirer shall, promptly after making full payment for New Federal's stock, elect New Federal's board of directors, and the board of directors shall, promptly after being elected, elect officers of New Federal;

5. The Acquirer shall submit to the Bank Board, promptly after completion of the acquisition of New Federal's stock, a letter stating that the purchase was made solely for the purposes of investment and not with a view towards resale or distribution; that the Acquirer was provided with all material information requested concerning New Federal and the acquisition; that at the

time of consummation of the acquisition no material adverse change had occurred with respect to the business and operations of the Acquirer since the date of any financial statements submitted in connection with the proposed acquisition; that no expense has been incurred by the Acquirer in the organization of New Federal which is chargeable to New Federal and no such expense will be incurred; and that no funds were accepted for deposit by New Federal until organization of New Federal was completed in accordance with the Plan of Organization as executed and the terms of this Resolution;

6. The board of directors of New Federal shall approve, and the President or another officer shall be authorized to execute and shall execute, an Assistance Agreement, an Acquisition Agreement and a Regulatory Capital Maintenance Agreement, which shall be substantially in the forms of the proposed agreements (copies of which are in the Minute Exhibit File), *provided* that the final form of each shall be approved by the OGC; and the board of directors of New Federal shall authorize the officers of New Federal to take all other actions necessary to effect the organization of New Federal and to effect the acquisition of and the Mergers;

7. The Applicants and the Acquirer shall execute an Assistance Agreement and a Regulatory Capital Maintenance Agreement which shall be substantially in the forms attached as exhibits to the Plan of Organization (copies of which are in the Minute Exhibit File), *provided* that the final form of each shall be approved by the OGC;

8. Each dividend notification filed by New Federal

pursuant to the provisions of § 584.5 of the Holding Company Regulations 12 C.F.R. § 584.5 (1987), shall demonstrate compliance with § 5(k) of the Regulatory Capital Maintenance Agreement;

9. New Federal shall serve the communities previously served by the Associations and adopt the Community Reinvestment Act ("CRA") statement, delineation of the community, and programs to implement the CRA policies of the Associations effective upon the Effective Date; and thereafter New Federal shall seek to maintain a satisfactory CRA rating;

10. New Federal shall continue the savings and lending programs of and offer accounts and make loans on the same terms as the Associations until such time as the board of directors of New Federal authorizes changes therein consistent with applicable law and regulations;

11. New Federal shall promptly file with the Bank Board a copy of the Plan of Organization on which its President or other duly authorized officer shall have certified to the completion of the steps of organization as described therein;

12. New Federal shall promptly file with the Bank Board five copies of its charter and bylaws in the forms herein approved;

13. New Federal shall operate in accordance with the business plan submitted with the Application. The board of directors of New Federal will be responsible for review of New Federal's financial condition and operations as they relate to the business plan to assure New Federal's adherence to the business plan and, by

the 20th day after each quarter-end, New Federal shall provide the Supervisory Agent with a report evidencing New Federal's compliance with the business plan. Material deviations from the business plan shall not be undertaken without the prior written approval of the Supervisory Agent;

14. Within 30 days of the Effective Date, and thereafter as applicable, New Federal shall have submitted to the Supervisory Agent the original copy of the "Oath of Director of FSLIC-Insured Institution" properly executed by each of the institution's directors;

RESOLVED FURTHER, That Statesman shall stipulate, in a form satisfactory to the PSA, that at such time as it becomes non-diversified, it shall, no later than 60 calendar days prior to the beginning of each fiscal year, file a statement with the PSA of anticipated issuances of debt in the upcoming fiscal year by itself and each of its noninsured subsidiaries prepared both on a consolidated (excluding any insured subsidiary) and unconsolidated basis in a form satisfactory to the PSA ("Proposed Debt Budget"). Unless notified in writing by the PSA within 15 business days following receipt of the Proposed Debt Budget, or amendment thereto, the Proposed Debt Budget shall be considered complete. If the PSA does not object to the Proposed Debt Budget within 45 calendar days following the receipt of a complete Proposed Debt Budget, the Proposed Debt Budget shall be deemed approved, and Statesman and its uninsured subsidiaries shall have the right to issue, sell, renew, guarantee or assume indebtedness as set forth in the Proposed Debt Budget without further filing with respect thereto. Any additional debt not covered by the Proposed Debt Budget will be subject to an Application H-(g) or revised Debt Budget which would be subject to

the same approval process as above. The Corporation or its delegate may terminate this approval given pursuant to 12 U.S.C. § 1730(g) and 12 C.F.R. § 584.6 or may amend the terms of such approval for good and reasonable cause after providing Statesman with notice and an opportunity for response; and

RESOLVED FURTHER, That Statesman and its subsidiaries that are not insured institutions under 12 U.S.C. § 1730(g) will comply with all covenants in their debt instruments and agreements, and any material default with regard to such covenants will be promptly cured within 30 days. All uncured defaults will be reported to the PSA within 45 days after their occurence; and

Approval of Cross-Marketing Activities

RESOLVED FURTHER, That the Bank Board determines that the cross-marketing activities described in the Application, if conducted in the manner and only to the extent requested in the Application and in accordance with the conditions set forth below, would not be detrimental to the interests of New Federal's savings account holders or to the insurance risk of the FSLIC; and

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, pursuant to its authority under § 408(m), 12 U.S.C. § 1740a(m) (1982), hereby approves New Federal's engaging in the cross-marketing activities described in the Application, in the manner and to the extent described, *provided* that:

1. Purchasers of insurance products of affiliates of New Federal sold by employees of New Federal must

be informed that such products are in no way related to FSLIC insurance; and

2. New Federal may cross-market only with regard to existing lines of business or areas of business activities of the Applicants and their affiliates without prior approval of the PSA; and

Approval and Waivers for Affiliated Transactions

RESOLVED FURTHER, That the Bank Board determines that the affiliated transactions described in the Application, if consummated in accordance with the conditions stated below, would not be detrimental to the interests of New Federal's savings account holders or to the insurance risk of the FSLIC; and the Bank Board, as operating head of the FSLIC, consistent with the policy set forth in § 571.7 of the Insurance Regulations, 12 C.F.R. § 571.7 (1987), and pursuant to § 584.3(b) of the Holding Company Regulations, 12 C.F.R. § 584.3(b) (1987), approves such transactions, *provided* that:

1. Affiliate transactions shall not violate New Federal's internal policies and practices for transactions with third parties:

2. Statesman and New Federal must maintain documentation supporting the conclusion that affiliate transactions are fair to and in the best interests of New Federal and that all prices, rates or charges assessed are competitive in the relevant markets;

3. The PSA is hereby authorized to revoke the authority to engage in a particular affiliated transaction or types of transactions (a) if the PSA determines, in the exercise of reasonable judgment, that the terms or rates of such transaction or types of transactions are not comparable to terms or rates between New Federal and

third parties engaged in similar activities or are not comparable to competitive local market rates and terms (provided that the PSA shall provide New Federal with an opportunity to justify or cure the particular objections to such transaction) or (b) the PSA determines, in the exercise of reasonable judgment, that the transaction or types of transactions poses an undue risk to New Federal;

4. The authorization to engage in affiliate transactions shall not be deemed a waiver of any other Bank Board regulations, including, but not limited to, the restriction on direct investments and loans to one borrower;

5. Permissible affiliate transactions are limited to those related to existing businesses of the Applicants or any of their affiliates without prior PSA approval;

6. Beginning in 1989 New Federal must submit an annual report to the Supervisory Agent indicating the types and amounts of affiliate transactions to be entered into in the subsequent fiscal year. If the Supervisory Agent does not object to such transactions within thirty days after the submission of the annuual report, such transactions shall be deemed approved. The Supervisory Agent shall make any such objection only in the exercise of reasonable judgment. If New Federal anticipates significant deviations from the annual report, it must file an amended report;

7. New Federal must submit quarterly reports to the Supervisory Agent indicating the types and amounts of affiliate transactions entered into during the particular quarter;

8. Activities conducted by a "securities affiliate" of

the Acquirer shall be conducted in accordance with the following conditions:

(a) the securities affiliate shall be operated in such a manner that maintains its separate corporate identity;

(b) the activities of the securities affiliate shall be conducted in areas that are identifiable and physically distinct from areas where the insured institution controlled by Acquirer conducts the business of receiving deposits;

(c) insured institutions that are controlled by Acquirer and any securities affiliate shall take measures necessary to ensure that officers, directors and employees of such insured institution who are also officers, directors or employees of any such securities affiliate are aware of and undertake to abide by Federal Home Loan Bank Board policy statements on conflicts of interest, 12 C.F.R. § 571.7, and usurpation of corporate opportunities, 12 C.F.R. § 571.9, and any additional or successor statements of policy or rules addressing these subjects;

(d) any employee of a securities affiliate that is also an employee of any insured institution controlled by Acquirer that deals with customers at a teller window or comparable area may not receive comissions or other compensation related to the volume of sales of securities by the securities affiliate and any such employee that deals with customers at a teller window or comparable area in connection with services or investments offered by the insured institution

shall not also deal with customers in connection with products or services offered by any securities affiliate;

(e) advertising for the securities affiliate's products and services shall clearly and prominently distinguish such products and services and the operation of such securities affiliate from the operation of any insured institution controlled by Acquirer;

(f) the securities affiliate shall conduct its operation independent from insured institution controlled by Acquirer, pursuant to separate and independent policies and procedures, and any insured institution controlled by Acquirer shall conduct its operations independent from the securiteis affiliate, pursuant to separate and independent policies and procedures;

(g) Acquirer, any securities affiliate and any insured institution controlled by Acquirer shall take measures necessary to make customers aware that (a) the securities affiliate is a separate organization from the insured institution and (b) in the case of investments recommended, offered, or sold by the securities affiliated that are not insured by the FSLIC or the FDIC, not guaranteed by the insured institution and are not otherwise obligations of the insured institution, that such investments are not obligations of the insured institution and are not so insured or guaranteed; and

(h) all transactions between any insured institution controlled by Acquirer and the securities affiliate, including where the insured institution acts in a fiduciary or co-fiduciary capacity in securities transactions through the insured institution, trust department, shall be on terms that are demonstrably comparable to available alternative transactions with unrelated parties.

9. With respect to any securities affiliate of the Acquirer that is engaged in the business of underwriting, distributing or dealing in securities of any type, New Federal shall not during the first 180 days following the Effective Date, without obtaining the prior writtten approval of the PSA, directly or indirectly:

(a) extend credit in any manner to a securities affiliate or a subsidiary thereof;

(b) purchase for its own account assets of a securities affiliate or a subsidiary thereof; *provided, however,* that subparagraphs (a) and (b) above do not apply to any extension of credit by an insured bank or insured institution made to acquire or sell any securities of the United States if:

(i) the extension of credit is to be repaid on the same calendar day;

(ii) the extension of credit is incidental to the clearing of transactions in those securities through that insured bank or insured institution; and

(iii) both the principal of and the interest on the extension of credit are fully secured by securities of the United States;

(c) issue a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, for the benefit of a securities affiliate or a subsidiary thereof;

(d) extend credit in any manner to any investment company advised by or the shares of which are distributed by a securities affiliate;

(e) extend credit, or issue or enter into a standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance, or other facility, for the purpose of enhancing the marketability of a securities issue underwritten or distributed by a securities affiliate;

(f) knowingly extend or arrange for the extension of credit, directly or indirectly, secured by or for the purpose of purchasing any security while, or for thirty days after, that security is the subject of a distribution in which a securities affiliate of that insured bank or insured institution participates as an underwriter or a member of a selling group;

(g) extend credit to an issuer of securities underwritten by a securities affiliate for the purpose of paying the principal of those securities or interest for dividends on those securities;

RESOLVED FURTHER, That for the purposes of paragraphs 8 and 9 above, (i) a "securities affiliate" means a company that engages in securities brokerage, investment advisory or other activities permitted for brokers or dealers registered under the Securities Exchange Act of 1934 or for investment advisers registered under the Investment Advisors Act of 1940, underwriting, distributing or dealing in securities of any type, except that such term shall not include insurance products deemd to be securities, including and without limitation variable annuities and variable life insurance; (ii) the activities permitted by such paragraphs shall be limited to those specifically set forth in the Application, unless the PSA grants prior approval in writing for additional activities; and (iii) nothing in any resolution contained herein shall be deemed a waiver of any rules, regulations or Bank Board actions applicable to the permitted activities and New Federal shall be bound by such rules, regulations and actions; and

Waiver of Certain State Laws

RESOLVED FURTHER, Pursuant to § 408(m) of the NHA, 12 U.S.C. § 1730a(m) (1982), the Bank Board hereby waives the laws of any state: (1) that prohibit, restrict or limit the affiiliation between Statesman or any of its subsidiaries engaged in insurance activities with New Federal, or (2) that prohibit, restrict or limit any insurance activities of Statesman, or any of its subsidiaries, as a result of such affiliation. However, this waiver does not apply to state laws that limit the percentage of an insurance company's assets that may be invested in any one subsidiary and other similar state law prohibitions, restrictions and limitations that are not triggered by the fact that a subsidiary is engaged in the savings and loan or banking business; and

Home Office

RESOLVED FURTHER, That New Federal's home office is hereby temporarily redesignated to be located in Waterloo, Iowa and such location shall revert to Des

Moines, Iowa upon New Federal's selection of a site there and the PSA's approval of such site; and

Branch Offices

RESOLVED FURTHER, That maintenance of the home office and branch offices of the Associations as the home office and branch offices of New Federal, upon the Acquisition and the Mergers becoming effective, is hereby approved; and

Management Interlock

RESOLVED FURTHER, That the Bank Board hereby finds that, pursuant to § 408(m) of the NHA, 12 C.F.R. § 1730a(m) (1982), the provisions of § 563f.3 of the Insurance Regulations, 12 C.F.R. § 563f.3 (1987), shall not apply to Simon W. Casady in his capacity as director of Statesman, *provided* that the Supervisory Agent may terminate the foregoing exemption at any time; and

Effective Date

RESOLVED FURTHER, That the Acquisition and the Mergers shall be effective upon the execution by the appropriate parties of the Assistance Agreement.

By the Federal Home Loan Bank Board

John M. Buckley, Jr.
Secretary

March 14, 1988
R R R

Virgil Maxwell
President
Statesman Bank for Savings, FSB
100 Des Moines Building
Des Moines, IA 50309

Dear Mr. Maxwell:

In connection with the approval by the Federal Home Loan Bank Board ("Bank Board") of the assisted acquisition of First FSB of Waterloo, Peoples FS&LA of Waterloo, Perpetual S&LA, all of Waterloo, Iowa, and First Federated SB of North Palm Beach, North Palm Beach, FL, ("Associations") by Stateman Savings Holding Company (SSHC") via its wholly-owned subsidiary Statesman Bank for Savings, FSB ("SBS") the following forbearances are hereby granted.

The acquisition of control of the associations by SBS has been deemed to be an acquisition instituted for supervisory reasons. Therefore, the Federal Savings and Loan Insurance Corporation ("FSLIC") will forbear, for a period not to exceed five years folllowing consummation of the acquisition, from exercising its authority under Section 563.13 of the Insurance Regulations, for any failure of SBS to meet the regulatory capital requirements of Section 563.13 arising solely from (a) scheduled items attributable to the assets of the associations existing at the effective date of the acquisition, or that are or become classified assets pursuant to Sections 561.16c, 563.17-2 and 571.1a of the Insurance Regulations; (b)

operating loses on acquired assets, excluding those losses covered by FSLIC assistance, (c) capital losses, excluding those losses covered by FSLIC assistance, sustained by the associations upon disposition of acquired assets; (d) the associations' liabilities, including averaged liabilities as of the effective date of the acquisition; or the associations' net worth deficiency existing at the effective date of the acquisition.

For a period of one year following the effective date, in determining whether a penalty shall be assessed against or paid by SBS pursuant to Section 523.12 (Deficiencies and Penalties) of the Rules and Regulations for the Federal Home Loan Bank System ("Bank Regulations"), the liquidity requirements of Section 523.11 (Liquidity Requirements) of the Bank Regulations as applied to SBS shall be reduced by (1) the amount of the associations' liquidity deficiencies existing at the effective date and (2) any aggregate net withdrawals (excess of withdrawals over case savings received) from the associations' offices after the effective date.

It is the FSLIC's intention $21 million of the cash contribution to be made to SBS pursuant to an assistance agreement to be entered into between the FSLIC and SBS and the $5 million subordinated debenture are to be a credit to SBS regulatory capital; therefore, for regulatory accounting purposes, SBS may book such contribution as a direct addition to its regulatory capital.

Not alter than 90 days following the effective date of the merger, SBS shall submit to the

Supervisory Agent an independent certified public accountant's opinion that SBS has accounted for the merger in accordance with generally accepted accounting principles except that as herein provided by the Board, for purposes of reporting to the Board the cash contribution by the FSLIC to SBS with respect to the associations, pursuant to the assistance agreement, and the $5 million subordinated debenture shall be booked as a direct credit to SBS.

SBS shall be given a reasonable period of time, but not to exceed 3 years, to phase out, dispose of or discontinue in an orderly manner, any acquired investments, activities, or operations inconsistent with the Home Owners Loan Act of 1933, as amended, provided that such action is taken at the earliest possible date without material loss to SBS.

SBS shall not for a period not to exceed 3 years, be deemed in violation of any of the provisions of Section § 545.74 (Service Corporations) of the Rules and Regualtions for the Federal Savings and Loan System by reason that any activities of a service corporation acquired as a part of the merger, at or before the effective date, are not approved or authorized by the Home Owners Loan Act of 1933, as amended.

Section 563.9-3 (Loans to One Borrower) of the Insurance Regulations limits the aggregate amount of loans that may be made to one borrower. The Bank Board will forbear from taking any enforcement/supervisory action for a violation of this Regulation arising from the transfer

of the two loans $30 million loan now placed with Bank One, Indianapolis, N.A., to the Institution if such loans are placed on the Institution's books at the same terms, rates, conditions, and restrictive covenants, and with the same collateralization as now exists on the Bank One loan. However, Statesman shall exercise its best good faith efforts to avoid the placement of this loan on SBS' books. Thses loans consist of a $20 million loan to Statesman and a $10 million loan to Statesman's Employee Stock Ownership Plan, which is guaranteed by Statesman. The Bank Board will grant the same forbearance for a loan or line of credit not to exceed $17 million for the first three months and $15 million thereafter for the purpose of making a payments to the Government National Mortgage Association provided that the term of the loan/line does not exceed one year and the rate on the loan is a market rate.

Section 584.3 (Transactions with Affiliates) of the Insurance Regulations prohibits an institution from accepting the stock of any affiliate as collateral security for any loan or extension of credit made by such institution. The Bank Board will forbear from taking any enforcement/supervisory action for a violation of this Regulation arising from the transfer of the $30 million in loans, as described in the preceding paragraph of this letter.

Section 584.3 (Transactions with Affiliates) of the Insurance Regulations prohibits an institution from investing any of its funds in the stock of any affiliate. The Bank Board will forbear from taking

any enforcement/supervisory action for a violation of this Section arising from the preferred stock of Statesman Group, Inc. ("Statesman") being held by SBS. Upon consummation of the transaction, $12.6 million of Statesman's preferred stock will be transferred to SBS through SSHC. The number of shares of the preferred stock held by SBS may decrease annually according to the income sharing agreement as defined in the Assistance Agreement. Specifically, in any year where SBS' gross book income (as defined in the Assistance Agreement) exceeds $5 million, $2 million of the Statesman's preferred stock held by SBS will be transferred to FSLIC. The term of the income sharing arrangement with FSLIC expires in ten years. Ten years following the acquisition of SBS by SSHC and Statesman, SBS will commence redemption of the entire remaining holdings of Statesman's preferred stock at the rate of $3 million per year until the entire amount has been redeemed.

Investment in the preferred stock of Statesman is not an authorized investment as specified in Section 5 of the Home Owners Loan Act of 1933. Therefore, The Bank Board will forbear from taking supervisory/enforcement action against SBS for the violation. Arising from the investment is preferred stock of Statesman being held by SBS as described in the preceding paragraph.

Section 563.9-8 (Regulation of equity risk investment on equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans) of the Insurance Regulations limits the aggregate

amount that can be invested in "equity risk investments." The Bank Board will forbear from taking enforcement/supervisory action with regard to SBS' holding of the 12.6 million worth of preferred stock under the same terms as described in paragraph 9 above.

The forbearances or waivers extended by this letter do not relieve SBS of its continuing obligations to maintain records of its regulation capital condition and to report its financial condition in accordance with applicable regulatory requirements. This letter does not and shall not be construed to constitute forbearance or waiver by the Bank Board or the FSLIC with respect to any regulatory or other requirements other than those encompasses within the preceding paragraphs 1 through 5. Other than the actions to enforce the regulatory requirements waived in accordance with paragraphs 1 through 5 and the statutory provisions authorizing imposition of the waived requirements, insofar as such requirements are waived, the Bank Board and the FSLIC expressly reserve all of their statutory rights and powers with respect to SBS including, without limitation, those under Section 5 of the Home Owner's Loan Act of 1933 and Sections 406 and 407 of the National Housing Act.

By the Federal Home Loan Bank Board

John M. Buckley, Jr.
Secretary

OVERSIGHT ON THE CONDITION OF THE FINANCIAL SERVICES INDUSTRY

HEARINGS

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

RESULTS OF THE AUDIT OF THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION (FSLIC), 1987, FINANCIAL STATEMENTS AND THE INCREASING FUNDS AND SAVINGS AND LOAN INDUSTRY PRESENTED BY THE INCREASING NUMBER OF INSOLVENT AND INADEQUATELY CAPITALIZED INSTITUTIONS

AND

THE REPORT OF THE BANK REGULATORS ON THE VARIETY OF DEVELOPMENTS IN RECENT YEARS THAT MAKE SATISFACTORY EARNINGS FOR THE BANKING SYSTEM MORE DIFFICULT TO ACHIEVE. HOWEVER, THE OUTLOOK FOR THE IMMEDIATE FUTURE IS CAUTIOUSLY OPTIMISTIC

MAY 19, 25, AND 26, 1988.

Printed for the use of the Committee on Banking, Housing and Urban Affairs

U.S. GOVERNMENT PRINTING OFFICE
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STATEMENT OF
M. DANNY WALL, CHAIRMAN
FEDERAL HOME LOAN BANK BOARD
BEFORE THE
COMMITTEE ON BANKING, HOUSING AND
URBAN AFFAIRS

U.S. SENATE

MAY 26, 1988

Index

		Page
I.	Financial Condition of the Thrifts Industry	1
II.	Overview of FSLIC	5
	A. Recapitalization	5
	B. Insurance Premiums	8
	C. Current Condition of FSLIC	11
	D. Projection of Future Amount of Capital Needed	13
III.	Bank Board Approaches to Problem Institutions	14
	A. The Southwest Plan	14
	B. Other FSLIC Actions	17
	C. Tax and Others FSLIC-Related Legislative Interests	19
	D. Management Consignment Program	21
	E. Capital Forbearance	22
IV.	Bank Board Actions to Maintain the Profitable Segment of the Industry	23
	A. Supervisory Actions	23
	B. Enforcement Activities	26
	C. Strengthened Capital Requirements	28
	D. Case-by-case Capital Regulation	29
	E. Movement to GAAP Accounting as Required by CEBA	30
V.	Conclusion	30

In addition to consolidating institutions that had contributed to the cost of funds problem in issue, Southwest will decrease duplications and operating cost through a substantial reduction in the number of branches of the acquired institutions, concentrating on areas where there is duplication of branches.

The Board is committed to moving the Southwest Plan forward as expeditiously as possible. We are pleased that the consolidations that have been completed to date are adhering to the overall objectives that the Board established when it formulated the plan. A competitive environment is being enhanced, redundancies are being eliminated, and capable management is taking over. Significantly, from FSLIC's perspective, the use of cash to resolve problems is being minimized, and the FSLIC fund will have a share of the future profits of assisted institutions.

B. *Other FSLIC Actions*

During 1987 FSLIC resolved 47 troubled institutions at an estimated cost of $3.7 billion. Thirty-one of these cases were resolved by assisted sales to other financial institutions or to corporate and private investors, saving FSLIC approximately $400 million over the cost of liquidating the 31 institutions. From the enactment of the CEBA until the end of 1987, the Board completed sixteen assisted acquisitions and four liquidations, for an average of approximately one transaction per week. The Bank Board has set a goal for FSLIC to continue consummating transactions at the same pace this year. This goal is in addition to case resolutions under the Southwest Plan.

Given the size of its caseload and the available resources, FSLIC prioritizes cases according to the

cost-effectiveness of resolution. In most cases, the preferred resolution is to sell a troubled institution because that is normally the least costly alternative for FSLIC. In addition, an assisted acquisition offers the potential of preserving the viable aspects of the troubled institution (such as its branch structure, its case deposit base, and its employees), while providing new capital to the industry in a manner that avoids the cost to FSLIC of operating a receivership.

During late 1986 and early 1987, FSLIC's marketing efforts were severely curtailed because of the depleted condition of the insurance fund. However, FSLIC embarked on a stepped-up marketing program late in the second quarter of 1987 and by year-end had marketed 47 institutions with total assets exceeding $16.5 billion and liabilities of $18.5 billion.

Through May 25, 1988, FSLIC was successful in resolving 23 troubled institutions (with consolidated liabilities of approximately 4.9 billion) for an estimated cost of 1.32 billion. Thirteen of these cases, with total liabilities of $3.5 billion, were resolved by assisted sales to other financial institutions or to corporate and private investors. These transactions saved the FSLIC approximately $252 million over the cost of liquidating the institutions. In addition, the Southwest Plan has resulted in savings to FSLIC of $532 million, for a total savings of $784 million this year.

For the second quarter of 1988, FSLIC projects 19 case resolutions. Twenty-nine institutions with assets totaling $5.7 billion are tentatively scheduled for marketing. FSLIC expects to market through both mail solicitations and telephone solicitations. The first and second quarter marketing efforts coupled with the institutions marketed during the second half of 1987 totaled over 100 institutions with assets exceeding $48 billion dollars.

One of the more significant acquisitions arranged by FSLIC apart from those made under the Southwest Plan involved the acquisition last March of four troubled institutions by the Statesman Group, Inc. ("Statesman"). This transaction is noteworthy not only for the number of institutions involved, but also because it represented the Board's first exercise of its reinstated authority under section 408(m) of the NHA to override restrictions on cross-marketing of products and services between subsidiaries of the holding company and the newly acquired thrifts.

Section 408(m) of the NHA, first enacted by the Congress in the Garn-St Germain Depository Institutions Act of 1982 and reinstated by CEBA, authorized the Board, with certain limited exceptions, to arrange for acquisitions and mergers of troubled thrift institutions notwithstanding the provisions of any other state or federal law. The reinstatement of section 408(m) in last year's CEBA legislation was a reaffirmation of Congress' original intent that the Bank Board be provided with broad discretion to preempt those laws that would otherwise materially interfere with its ability to negotiate with potential acquirers and to resolve supervisory cases at the lowest possible cost to the FSLIC.

In approving the Statesman acquisition of three insolvent thrift institutions in Iowa and a fourth troubled savings and loan association in Florida, the Board agreed to waive certain cross-marketing restrictions generally applicable to thrift holding companies and their affiliates that could have prohibited the acquired institutions from marketing their affiliates' insurance product and service. A key factor in the Board's decision to grant these waivers was that Statesman's acquisition offer involved less financial assistance from the FSLIC than any other

available alternative. In fact, the financial assistance provided by the FSLIC in connection with these acquisitions was $30 million less than the cost to the FSLIC of liquidating the four institutions. In making this determination, the Board also noted that: (1) but for the acquisitions, Statesman's insurance affiliates would have been able to enter into joint-marketing arrangements with the acquired institutions and to offer their products and services at the branch offices of the thrifts, and (2) the imposition of any cross-marketing restrictions, under the circumstances, would have been a material impediment to the acquisitions. Accordingly, these waivers constituted a proper exercise by the Board of its emergency acquisition authority under section 408(m).

The Statesman transaction also represented a significant step by the Bank Board in permitting an affiliation of a thrift and an investment banking firm. The moratorium on such affiliation contained in section 408(r) of the NHA expired on March 1, 1988, therefore, there is no longer any statutory prohibition on acquisitions of insured institutions by companies with subsidiaries engaged principally in certain securities activities. Even if this section had survived, however, the affiliation between the institutions and Stateman's broker/dealer subsidiary would have been exempt pursuant to Section 408(r)(2)(C) because the institutions would have had total assets of more than $300 million at the time of the acquisition. In approving this acquisition the Board imposed a series of firewall restrictions on the activities of Statesman's subsidiaries in order to insulate the deposits of the insured institutions from the activities of the broker-dealer affiliates.

As you are undoubtedly aware, we are attempting to resolve the problems of the troubled American

Savings and Loan Association of Stockton, CA, ("American") the thrift subsidiary of Financial Corporation of America. The Bank Board continues to monitor the day to day activities of American while striving to find a solution that entails the least cost to FSLIC. On April 21, 1988, the Bank Board agreed to negotiate exclusively with the Robert H. Bass Group, Inc. for a period of 75 days concerning the possible sale of American. These negotiations are ongoing.

C. Tax and Other FSLIC-Related Legislative Interests

It is generally more cost effective for FSLIC to resolve the problems of troubled thrifts through assisted mergers and acquisitions rather than liquidations. In addition to the reduced costs, assisted acquisitions afford additional benefits, such as maintaining public confidence in the financial system by avoiding failures and liquidations of depository institutions.

Since 1981, the tax laws have contained a number of provisions ("the FSLIC tax provisions") that were enacted to help FSLIC fulfill its statutory mandate of protecting the safety and soundness of insured institutions. These provisions are currently set to expire at the end of 1988. We believe these provisions should be extended until the end of 1991 and we ask you to support such an extension.

There are two areas in which the expiring tax provisions affect the FSLIC's ability to arrange for assisted acquisitions of troubled thrift institutions. First, the Internal Revenue Code provides that assistance paid by the FSLIC in connection with an assisted acquisition will not be considered taxable income.[21] The benefit of this provision is not limited

to the troubled institution or the acquirer, it also inures to the benefit of the FSLIC by reducing the amount of assistance otherwise needed. For example, if under current law the FSLIC must pay an acquirer $100 as an inducement to acquire a troubled thrift, the FSLIC may need to pay potential acquirors $150 if that assistance payment is to be subject to tax.

Second, special provisions in the Internal Revenue Code's corporate reorganization rules clarify that a FSLIC-supervised merger or acquisition can qualify as a tax-free reorganization, such that the net operating and built-in tax losses of the troubled institution can be fully utilized by the acquiring institution. Here again, although the nominal benefit of this provision accrues to the acquiring institution, in a very real sense, the benefit inures to the FSLIC as a result of contractual agreements between it and the acquirer requiring that tax benefits enjoyed by the acquiring institution must be accounted for and rotated back to FSLIC.

By making each dollar of FSLIC assistance go further, the extension of these provisions will not only allow FSLIC to resolve a greater number of cases, and to resolve them more quickly than it would if these previsions were allowed to expire, but will, we believe, allow for the most cost effective resolution of these cases from the Federal government's viewpoint. For this reason, we would urge the members of this Committee to encourage your colleagues on the Finance Committee to support an extension of these provisions for an additional three years.

The Board would also support three additional legislative initiatives that would substantially assist FSLIC. Two amendments would clarify authority that has been blurred as a result of recent judicial action and would substantially assist FSLIC in controlling legal and administrative costs. An amendment to

[21]26 U.S.C.A. § 597 (West Supp. 1988).

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

FEDERAL HOME LOAN BANK BOARD
THRIFT FINANCIAL REPORT
Statement of Condition

PREPARED BY:

PHONE NUMBER (Include Area Code): (317) 263-0657

DISTRICT/DOCKET

NAME AND ADDRESS OF INSTITUTION (Please Use Preprinted Label)

UNION FSB OF FRANKTON 06/08528
204 SIGLER STREET
FRANKTON, IN
46044-0000

(REPORT IN THOUSANDS OF DOLLARS)

SECTION A
ASSETS

		BIL	MIL	THOU
MORTGAGE LOANS, CONTRACTS, AND PASS-THROUGH SECURITIES				
CONSTRUCTION LOANS ON:				
1-4 Dwelling Units:	022			453
5 or More Dwelling Units	024			-0-
Nonresidential	026			-0-
PERMANENT MORTGAGES ON:				
1-4 Dwelling Units:				
First Mortgages and Closed-End Junior Liens	031		23	030
Revolving, Open-End Loans	033			-0-
5 or More Dwelling Units	034			46
Nonresidential (Except Land)	036			825
Land	050			-0-
FACILITATING REO SALES	060			524
MORTGAGE-BACKED PASS-THROUGH SECURITIES:				
Insured or Guaranteed by an Agency or Instrument of the U.S.:				
Issued by REMICs	072			-0-
Issued by Other Entities	074		4	603
Conventional:				
Issued by REMICs	082			-0-
Issued by Other Entities	084			-0-
ACCRUED INTEREST RECEIVABLE	090			89
ADVANCES FOR BORROWERS' TAXES AND INSURANCE	100			-0-
CONTRA-ASSETS TO MORTGAGE LOANS, CONTRACTS, AND PASS-THROUGH SECURITIES:				
Loans in Process	110			305
Deferred Loan Fees, Unamortized Premiums and Unaccreted Discounts	121		1	121
Valuation Allowances for Mortgages Held For Sale	129			-0-
Other Valuation Allowances:				
Specific	132			7
General	133			81
NET MORTGAGE LOANS, CONTRACTS, AND PASS-THROUGH SECURITIES (140 = 022 thru 100 minus 110 thru 133)	140		28	0[illegible]
NONMORTGAGE LOANS				
COMMERCIAL LOANS:				
Secured (Other than Mortgage)	158			-0-
Unsecured	160			-0-
CONSUMER LOANS:				
CLOSED-END:				
Loans on Deposits	170			350
Home Improvement Loans	180			-0-
Education Loans	190			-0-
Auto Loans	200			-0-
Recall Mobile Home Loans	230			-0-
Other	210			-0-
OPEN-END:				
Revolving Loans Secured by 1-4 Dwelling Units	218			-0-
Credit Cards and Other	221			-0-
FINANCING LEASES:				
Consumer	240			-0-
Nonconsumer	250			-0-
ACCRUED INTEREST RECEIVABLE	260			18
CONTRA-ASSETS TO NONMORTGAGE LOANS:				
Loans in Process	270			-0-
Deferred Loan Fees, Unamortized Premiums, and Unaccreted Discounts	281			-0-
Valuation Allowances:				
Specific	291			-0-
General	292			-0-
NET NONMORTGAGE LOANS (300 = 150 thru 260 minus 270 thru 292)	300			368

		BIL	MIL	THOU
REPOSSESSED ASSETS				
Foreclosed Real Estate and Real Estate in Judgment	310			157
Other Repossessed Assets	320			-0-
Valuation Allowances	330			44
REAL ESTATE HELD FOR DEVELOPMENT/INVESTMENT/RESALE				
Residential Property	342			-0-
Nonresidential Property	344			-0-
Valuation Allowances	350			-0-
SERVICE CORPORATIONS/SUBSIDIARIES				
Investment	352			-0-
Unsecured Loans	354			-0-
Appraisal Increment	500			-0-
Valuation Allowances	358			-0-
CASH, DEPOSITS, AND INVESTMENT SECURITIES (NONPASS-THROUGH)				
Cash & Noninterest-Earning Deposits	360			377
U.S. Government & Agency Securities	370		1	000
Equity Securities, Except FHLB Stock	382			-0-
CMOs (Non-REMICs)	385			-0-
Securities Issued by REMICs	386			-0-
Other Investment Securities & Deposits	387		2	165
Accrued Interest Receivable	390			40
Valuation Allowances	400			-0-
FIXED ASSETS				
Office Building (Land & Improvements)	410			149
Leasehold Improvements	420			-0-
Appraisal Increment	430			-0-
Furniture, Fixtures, & Equipment	440			99
Valuation Allowances	450			-0-
OTHER ASSETS				
Financial Futures/Options: Initial Margin	460			-0-
Maintenance Margin	470			-0-
Financial Options Fees Paid	480			-0-
Deferred Net Losses (Gains) on Futures/Options Hedging Assets	510			-0-
Deferred Net Losses (Gains) on:				
Loans Sold	520			-0-
Other Assets Sold	530			-0-
Intangible Assets:				
Purchased Loan Servicing	542			-0-
Goodwill and Other	544			1757
Leased Property:				
Consumer	550			-0-
Nonconsumer	560			-0-
Accounts Receivable Secured by Pledged Deposits	570			-0-
Other Assets	580			480
Valuation Allowances	590			-0-
TOTAL ASSETS	600		34	541

(600 = 140 + 220 + 240 + 320 + 340 + 360 + 382 + 384 + 500 + 580 thru 590 + 410 thru 440 + 450 thru 470 + 510 thru 550 minus 520, 530, 542, 544, 560)

MEMO ITEMS

		BIL	MIL	THOU
Amount Eligible for Regulatory Liquidity Included on Lines A072 thru A098, and A368 thru A390	900		3	542
Troubled Debt Restructured During the Quarter	905			
Assets Acquired For Stock: Real Estate	910			
Other	920			
FHA/VA and Other Federally Insured or Guaranteed Loans Included on Lines A022 thru A050	925			
Debt Securities on Lines A385 thru A387 Rated Below Investment Grade, Plus Those Held by Service Corporations/Subsidiaries	935			
Foreign Loans and Investments Included in Section A	938			
Check This Item if the Reporting Institution Has Any Ownership Interest in a Service Corporation, Subsidiary, or Real Estate Joint Venture (Except Finance Subsidiaries)	941			

060022

FEDERAL HOME LOAN BANK BOARD
THRIFT FINANCIAL REPORT

Statement of Condition (continued)

(REPORT IN THOUSANDS OF DOLLARS)

DISTRICT/DOCKET

NAME AND ADDRESS OF INSTITUTION (Please Use Preprinted Label)

SECTION B LIABILITIES

		BIL	MIL	THOU
DEPOSITS				
With Balances Less Than $80,000	012		24	995
With Balances $80,000 to $100,000	014		4	139
With Balances Greater than $100,000:				
Negotiable Certificates (Transferable Ownership) With Original Maturities of 3 Months or Less	016			
Other - Greater than $100,000	018		1	229
BORROWINGS				
FHLBank Advances	020			
Other Borrowed Money:				
Commercial Bank Loans	030			
Reverse Repurchase Agreements	040			
Retail Repurchase Agreements	050			
Overdrafts in Transaction Accounts	060			
Commercial Paper Issued	070			
Subordinated Debentures Not Qualifying as Regulatory Capital	080			
Mortgage-Backed Bonds Issued:				
CMOs	092			
Obligations of REMICs	094			
Other	096			
Other Borrowings	100			
DISCOUNTS NET OF PREMIUMS ON DEPOSITS AND BORROWINGS	102			65
OTHER LIABILITIES				
Accrued Interest Payable	110			
Accrued Interest on Deposits	120			
Dividends Payable on Stock	130			
Accrued Taxes	140			45
Accounts Payable	150			27
Advance Payments by Borrowers for Taxes and Insurance	160			
Financial Options Fees Received	170			
Other Liabilities and Deferred Income	180			
Deferred Net Gains (Losses) on Futures/Options Hedging Liabilities	190			
Deferred Income Taxes	200			
TOTAL LIABILITIES (800 = 012 thru 200)	800		32	620

MEMO ITEM

Pledged Deposits included on Lines 0012 thru 0018	900			

SECTION C - REGULATORY CAPITAL EXCLUDING GENERAL VALUATION ALLOWANCES

		BIL	MIL	THOU
Preferred Stock:				
Perpetual	012			
Redeemable Qualifying	014			
Common Stock	020			1
Contributed Capital	030		1	974
Qualifying Mutual Capital Certificates	040			
Qualifying Subordinated Debentures	050			
Appraised Equity Capital	060			
Net Worth Certificates	070			
Accrued Net Worth Certificates	080			
Income Capital Certificates	090			
Retained Earnings	115			(142)
TOTAL REGULATORY CAPITAL EXCLUDING GENERAL VALUATION ALLOWANCES (800 = 012 THRU 115)	800		1	961
TOTAL LIABILITIES AND REGULATORY CAPITAL EXCLUDING GENERAL VALUATION ALLOWANCES (810 = 0800 + C800)	810		34	581

MEMO ITEMS

Cash Dividends on:				
Preferred Stock	900			
Common Stock	910			
Other Capital Instruments	920			

Check this item if:

1. The reporting institution is including in its balance sheet for the first time assets and liabilities acquired as a result of a merger, or
2. The reporting institution purchased or sold a branch during the quarter. 930 ☐

Check this item if Line C930 above is checked and the merger was accounted for under the purchase method of accounting. 940 ☐

If the reporting institution restated its balance sheet for the first time this quarter as a result of applying push-down accounting, enter the date of the reorganization. (State numerically; e.g., 12/01/87)

	Month	Day	Year
948			

Annual Closing Date (Show month and day numerically; e.g., December 31 should be shown as 12/31.)

	Month	Day
950	6	30

EXHIBIT 28
ALL STATE LEGAL SUPPLY CO.

FEDERAL HOME LOAN BANK BOARD
THRIFT FINANCIAL REPORT
Statement of Condition
As of December 31, 1988

Docket
11/07046

COAST SAVINGS AND LOAN
P.O. BOX 9119
VAN NUYS, CA 91409
Transmitted 01/20/89 at 18:06

(REPORT IN THOUSANDS OF DOLLARS) Prepared by: SHATHA A. ALHASHIM Phone Number (include area code): (818) 365-1900

SECTION A - ASSETS

		Bil,Mil,Thou
MORTGAGE LOANS, CONTRACTS AND PASS-THROUGH SECURITIES		
CONSTRUCTION LOANS ON:		
1-4 Dwelling Units	(022)	2,310
5 or More Dwelling Units	(024)	17,700
Nonresidential	(026)	145,430
PERMANENT MORTGAGES ON:		
1-4 Dwelling Units		
First Mortgages and Closed-End Junior Liens	(031)	4,221,560
Revolving, Open-End Loans	(033)	31,905
5 or More Dwelling Units	(034)	2,745,641
Nonresidential (Except Land)	(036)	1,700,105
Land	(050)	18,473
FACILITATING RED SALES	(060)	0
MORTGAGE-BACKED PASS-THROUGH SECURITIES:		
Insured or Guaranteed by an Agency or Instrument of the U.S.:		
Issued by REMICs	(072)	0
Issued by Other Entities	(074) ✓	1,342,280
Conventional:		
Issued by REMICs	(082)	0
Issued by Other Entities	(084) ✓	10,896
ACCRUED INTEREST RECEIVABLE	(090)	111,816
ADVANCES FOR BORROWERS' TAXES AND INSURANCE	(100)	2,043
CONTRA-ASSETS TO MORTGAGE LOANS, CONTRACTS, AND PASS-THROUGH SECURITIES:		
Loans in Process	(110)	37,516
Deferred Loan Fees, Unamortized Premiums, and Unaccreted Discounts	(121)	45,860
Valuation Allowances for Mortgages Held For Sale	(123)	0
Other Valuation Allowances		
Specific:	(132)	24,052
General:	(133)	30,107
NET MORTGAGE LOANS, CONTRACTS, AND PASS-THROUGH SECURITIES (140 = 022 thru 100 minus 110 thru 133)	(140)	10,212,524
NONMORTGAGE LOANS		
COMMERCIAL LOANS:		
Secured (Other than Mortgage)	(150)	1,729
Unsecured	(160)	1,424
CONSUMER LOANS:		
CLOSED-END:		
Loans on Deposits	(170)	20,621
Home Improvement Loans	(180)	0
Education Loans	(190)	0
Auto Loans	(200)	0
Retail Mobile Home Loans	(230)	2,074
Other	(210)	0
OPEN END		
Revolving Loans Secured by 1-4 Dwelling Units	(218)	0
Credit Cards and Other	(221)	0
FINANCING LEASES:		
Consumer	(240)	0
Nonconsumer	(250)	0
ACCRUED INTEREST RECEIVABLE	(260)	577
CONTRA-ASSETS TO NONMORTGAGE LOANS:		
Loans in Process	(270)	0
Deferred Loan Fees, Unamortized Premiums, and Unaccreted Discounts	(281)	0
Valuation Allowances:		
Specific	(291)	0
General	(292)	0
NET NONMORTGAGE LOANS (300 = 150 thru 260 minus 270 thru 292)	(300)	26,425

		Bil,Mil,Thou
REPOSSESSED ASSETS		
Foreclosed Real Estate and Real Estate in Judgment	(310)	[illegible]
Other Repossessed Assets	(320)	[illegible]
Valuation Allowances	(330)	[illegible]
REAL ESTATE HELD FOR DEVELOPMENT/INVESTMENT/RESALE		
Residential Property	(342)	0
Nonresidential Property	(344)	839
Valuation Allowances	(350)	0
SERVICE CORPORATIONS/SUBSIDIARIES		
Investment	(352)	853,673
Unsecured Loans	(354)	0
Appraisal Increments	(500)	0
Valuation Allowances	(358)	44
CASH, DEPOSITS, AND INVESTMENT SECURITIES (NONPASS-THROUGH)		
Cash & Noninterest-Earning Deposits	(360)	153,678
U.S. Government & Agency Securities	(370)	261
Equity Securities, Except FHLB Stock	(382)	13,831
CMOs (NonREMICs)	(385)	34,[illegible]
Securities Issued by REMICs	(386)	328,[illegible]
Other Investment Securities & Deposits	(387)	521,[illegible]
Accrued Interest Receivable	(390)	13,767
Valuation Allowances	(400)	5,548
FIXED ASSETS		
Office Building (Land & Improvements)	(410)	31,936
Leasehold Improvements	(420)	25,506
Appraisal Increments	(430)	0
Furniture, Fixtures & Equipment	(440)	29,660
Valuation Allowances	(450)	0
OTHER ASSETS		
Financial Futures/Options:		
Initial Margin	(460)	0
Maintenance Margin	(470)	0
Financial Options Fees Paid	(480)	0
Deferred Net Losses (Gains) on:		
Futures/Options Hedging Assets	(510)	0
Deferred Net Losses (Gains) on		
Loans Sold	(520)	0
Other Assets Sold	(530)	0
Intangible Assets:		
Purchased Loan Servicing	(542)	0
Goodwill and Other	(544)	[illegible]
Leased Property:		
Consumer	(550)	0
Nonconsumer	(560)	0
Accounts Receivable Secured by Pledged Deposits	(570)	0
Other Assets	(580)	221,019
Valuation Allowances	(590)	0
TOTAL ASSETS (800=140+300+310+320+342+344+352+354+500+360 thru 390+410 thru 440+460 thru 480+510 thru 580 Minus 330, 350, 358, 400, 450, 590)	(800)	12,898,630

MEMO ITEMS

Amount Eligible for Regulatory Liquidity Included on Lines A072 thru A090 and A360 thru A390	(900)	514,381
Troubled Debt Restructured During the Quarter	(905)	3,366
Assets Acquired For Stock:		
Real Estate	(910)	0
Other	(920)	0
FHA/VA & Other Federally Insured or Guaranteed Loans Included on Lines A022 thru A050	(935)	51,137
Debt Securities on Lines A385 thru A387 Rated Below Investment Grade, Plus Those Held by Service Corporations/Subsidiaries	(936)	179,884
Foreign Loans and Investments Included in Section A	(938)	778
Check This Item if the Reporting Institution Has Any Ownership Interest in a Service Corporation, Subsidiary, or Real Estate Joint Venture (Except Finance Subsidiaries)	(941)	X

FEDERAL HOME LOAN BANK BOARD
THRIFT FINANCIAL REPORT
Statement of Condition
As of December 31, 1988

Dr: Ltr/Docket number
11/07046

COAST SAVINGS AND LOAN
P.O. BOX 9119
VAN NUYS, CA 91409
Transmitted 01/20/89 at 18:06

(REPORT IN THOUSANDS OF DOLLARS) Prepared by: SHATHA A. ALHASHIM

Phone Number (include area code): (818) 366-2800

SECTION B
LIABILITIES

		Bil,Mil,Thou
DEPOSITS		
With Balances Less than $80,000	(012)	5,873,307
With Balances $80,000 to $100,000	(014)	1,137,717
With Balances greater than $100,000		
Negotiable Certificates (Transferable Ownership) With Original Maturities of 3 Months or Less	(016)	208,255
Other - Greater than $100,000	(018)	1,590,019
BORROWINGS		
FHLBank Advances	(020)	1,677,000
Other Borrowed Money:		
Commercial Bank Loans	(030)	0
Reverse Repurchase Agreements	(040)	518,350
Retail Repurchase Agreements	(050)	0
Overdrafts in Transaction Accounts	(060)	0
Commercial Paper Issued	(070)	0
Subordinated Debentures Not Qualifying as Regulatory Capital	(080)	0
Mortgage-Backed Bonds Issued:		
CMOs	(092)	0
Obligations of REMICs	(094)	0
Other	(096)	28,208
Other Borrowings	(100)	613,142
DISCOUNTS NET OF PREMIUMS ON DEPOSITS AND BORROWINGS	(102)	(781)
OTHER LIABILITIES		
Accrued Interest Payable	(110)	26,222
Accrued Interest on Deposits	(120)	17,994
Dividends Payable on Stock	(130)	0
Accrued Taxes	(140)	0
Accounts Payable	(150)	143,043
Advance Payments by Borrowers for Taxes and Insurance	(160)	3,903
Financial Options Fees Received	(170)	0
Other Liabilities and Deferred Income	(180)	10,851
Deferred Net Gains (Losses) on Futures/Options Hedging Liabilities	(190)	0
Deferred Income Taxes	(200)	20,418
TOTAL LIABILITIES (800 = 012 thru 200)	(800)	11,861,648

MEMO

Pledged Deposits included on Lines B012 thru B018	(900)	0

SECTION C - REGULATORY CAPITAL EXCLUDING GENERAL VALUATION ALLOWANCES

		Bil,Mil,Thou
Preferred Stock		
Perpetual	(012)	0
Redeemable Qualifying	(014)	0
Common Stock	(020)	13,110
Contributed Capital	(030)	455,777
Qualifying Mutual Capital Certificates	(040)	0
Qualifying Subordinated Debentures	(050)	251,592
Appraised Equity Capital	(060)	0
Net Worth Certificates	(070)	0
Accrued Net Worth Certificates	(080)	0
Income Capital Certificates	(090)	0
Retained Earnings	(115)	316,497
TOTAL REGULATORY CAPITAL EXCLUDING GENERAL VALUATION ALLOWANCES (800 = 012 THRU 115)	(800)	1,036,982
TOTAL LIABILITIES AND REGULATORY CAPITAL EXCLUDING GENERAL VALUATION ALLOWANCES (810 = B800 + C800)	(810)	12,898,630

MEMO ITEMS

Cash Dividends on:		
Preferred Stock	(900)	0
Common Stock	(910)	1,311
Other Capital Instruments	(920)	0
Check this Item if: 1. The reporting institution is including in its balance sheet for the first time assets and liabilities acquired as a result of a merger, or 2. The reporting institution purchased or sold a branch during this quarter	(930)	X
Check this item if line C930 above is checked AND the merger was accounted for under the purchase method of accounting	(940)	
If the reporting institution restated its balance sheet for the first time this quarter as a result of applying push-down accounting, enter the date of the reorganization. (State numerically; e.g. 12/01/87)	(948)	00/00/00
Annual Closing Date (Show month and day numerically; e.g., December 31 should be shown as 12/31.)	(950)	12/31

3/31/89

OMB NO 3060-0106
(EXPIRES 03/31/89)

FEDERAL HOME LOAN BANK BOARD
THRIFT FINANCIAL REPORT
Statement of Condition

PREPARED BY:

PHONE NUMBER (Include Area Code)

DISTRICT/DOCKET

06/08528

UNION FSB OF FRANKTON
204 SIGLER STREET
FRANKTUN IN

46044-0000

(REPORT IN THOUSANDS OF DOLARS)

SECTION A
ASSETS

		BIL	MIL	THOU
MORTGAGE LOANS, CONTRACTS AND MORTGAGE POOL SECURITIES				
CONSTRUCTION LOANS ON:				
1-4 Dwelling Units	022			449
5 or More Dwelling Units	024			-0-
Nonresidential	026			-0-
PERMANENT MORTGAGES ON:				
1-4 Dwelling Units:				
First Mortgages and Closed-End Junior Liens	031		23	282
Revolving, Open-End Loans	033			-0-
5 or More Dwelling Units	034			-0-
Nonresidential (Except Land)	036			105
Land	050			-0-
MORTGAGE POOL SECURITIES:				
Insured or Guaranteed by an Agency or Instrument of the United States	070		4	770
Privately Issued	080			-0-
ACCRUED INTEREST RECEIVABLE	090			321
ADVANCES FOR TAXES AND INSURANCE	100			-0-
CONTRA-ASSETS TO MORTGAGE LOANS, CONTRACTS, AND MORTGAGE POOL SECURITIES:				(29,533)
Loans in Process	110			161
Unamortized Yield Adjustments	121			1249
Valuation Allowances for Mortgages Held For Sale	129			-0-
Other Valuation Allowances	131			87
NET MORTGAGE LOANS, CONTRACTS, AND MORTGAGE POOL SECURITIES (140 + 022 thru 100 minus 110 thru 131)	140		28	086
NONMORTGAGE LOANS				
COMMERCIAL LOANS:				
Secured (Other than Mortgages)	150			-0-
Unsecured	160			-0-
CONSUMER LOANS:				
CLOSED-END:				
Loans on Deposits	170			288
Home Improvement Loans	180			-0-
Education Loans	190			-0-
Auto Loans	200			-0-
Retail Mobile Home Loans	230			-0-
Other	210			-0-
OPEN-END:				
Revolving Loans Secured by 1-4 Dwelling Units	218			-0-
Credit Cards and Other	221			-0-
FINANCING LEASES:				
Consumer	240			-0-
Nonconsumer	250			-0-
ACCRUED INTEREST RECEIVABLE	288			8
CONTRA-ASSETS TO NONMORTGAGE LOANS:				
Loans in Process	270			-0-
Unamortized Yield Adjustments	281			-0-
Valuation Allowances	290			-0-
NET NONMORTGAGE LOANS (300 + 150 thru 288 minus 270 thru 290)	300			296

		BIL	MIL	THOU
REPOSSESSED ASSETS AND OTHER REAL ESTATE				
Repossessed Real Estate	110			157
Other Repossessed Assets	120			-0-
Real Estate Held for Development/ Investment/Resale:				
Residential Property	142			-0-
Nonresidential Property	144			-0-
Valuation Allowances	155			44
CASH, DEPOSITS, & INVESTMENT SECURITIES				
Cash and Noninterest-Earning Deposits	160			79
U S Government and Agency Securities	170			1000
Equity Securities, Except FHLB Stock	182			-0-
Mortgage Derivatives:				
CMOs	185			-0-
Principal-Only (PO) Strips	188			-0-
Interest-Only (IO) Strips and Residuals	189			-0-
Other Investment Securities & Deposits	191		1	699
Accrued Interest Receivable	190			71
Valuation Allowances	400			-0-
SERVICE CORPORATIONS/SUBSIDIARIES				
Equity Investment	406			-0-
Unsecured Loans	408			-0-
Valuation Allowances	409			-0-
FIXED ASSETS, Net of Depreciation				
Office Buildings and Land	410			47
Leasehold Improvements	420			-0-
Furniture, Fixtures, and Equipment	440			90
OTHER ASSETS				
Financial Futures/Options:				
Initial Margin	460			-0-
Maintenance Margin	470			-0-
Financial Options Fees Paid	480			-0-
Deferred Net Losses (Gains) on Futures/Options Hedging Assets	510			-0-
Deferrals Pursuant to §63c.14	525			-0-
Intangible Assets:				
Purchased Loan Servicing	562			-0-
Goodwill and Other	566			767
Leased Property:				
Consumer	550			-0-
Nonconsumer	560			-0-
Excess Loan Servicing	578			-0-
Other Assets	580			344
Valuation Allowances	590			-0-
TOTAL ASSETS (600 + 140 + 300 + 210 thru 344 + 388 thru 391 + 398 + 406 + 408 + 416 thru 568 minus 395, 400, 409, 590)	800		30	[illegible]R

MEMO ITEMS

Amount Eligible for Regulatory Liquidity	900			1889
Assets Acquired For Stock:				
Real Estate	910			
Other	920			
FHA/VA and Other Federally Insured or Guaranteed Loans Included on Lines A022 thru A050	935			
Debt Securities Rated Below Investment Grade, Plus Those Held by Service Corporations/Subsidiaries	937			
Foreign Loans and Investments Included in Section A	938			

Check This Item if the Reporting Institution Has Any Ownership Interest in a Service Corporation, Subsidiary, or Real Estate Joint Venture (Except Finance Subsidiary)

MEMO ITEMS

Troubled Debt Restructured:				
During the Quarter	905			
Cumulative Outstanding Balance	906			
Facilitated Sales of Real Estate	907			357
Securities Reported in Section A Issued by REMICs	908			

FEDERAL HOME LOAN BANK BOARD
THRIFT FINANCIAL REPORT

Statement of Condition (continued)

(REPORT IN THOUSANDS OF DOLLARS)

DISTRICT/DOCKET

NAME AND ADDRESS OF INSTITUTION (Please Use Preprinted Label)

06/08528

UNION FSB OF FRANKTON
204 SIGLER STREET
FRANKTON IN

46044-0000

SECTION B LIABILITIES

		BIL	MIL	THOU
DEPOSITS				
With Balances Less Than $80,000	012		25	458
With Balances $80,000 to $100,000	014		3	624
With Balances Greater than $100,000:				
Negotiable Certificates (Transferable Ownership)				
With Original Maturities of				
3 Months or Less	016			
Other - Greater Than $100,000	018		1	936
BORROWINGS				
FHLBank Advances	020			
Other Borrowed Money:				
Commercial Bank Loans	030			
Reverse Repurchase Agreements	040			
Retail Repurchase Agreements	050			
Overdrafts in Transaction Accounts	060			0
Commercial Paper Issued	070			
Subordinated Debentures (Incl. Mandatory Convertible) Not Qualifying as Definitional Capital	080			
Mortgage-Backed Securities Issued:				
CMOs	092			
Other	096			
Other Borrowings	100			
UNAMORTIZED YIELD ADJUSTMENTS ON PURCHASED DEPOSITS AND BORROWINGS	102			59
OTHER LIABILITIES				
Accrued Interest Payable	110			
Accrued Interest on Deposits	120			425
Dividends Payable on Stock	130			
Accrued Taxes	140			19
Accounts Payable	150			44
Advance Payments by Borrowers for Taxes and Insurance	160			
Financial Options Fees Received	170			
Other Liabilities and Deferred Income	180			
Deferred Net Gains (Losses) on Futures/Options Hedging Liabilities	190			
Deferred Income Taxes	200			
LIABILITIES EXCLUDING DEFINITIONAL CAPITAL (800 = 012 thru 200)	800		31	585
DEFINITIONAL CAPITAL				
Qualifying Subordinated Debentures	310			
Qualifying Mandatory Convertible Subordinated Debentures	312			
Qualifying Mutual Capital Certificates	320			
Qualifying Redeemable Preferred Stock	330			
Net Worth Certificates	340			
Income Capital Certificates	350			
Accumulated Annual Income Payments, not Due and Payable	360			
TOTAL DEFINITIONAL CAPITAL (300 = 310 thru 360)	380			
FSLIC Notes on Definitional Capital Instruments	390			
TOTAL LIABILITIES (INCL. DEFINITIONAL CAPITAL) (400 = 800 + 300 - 390)	400		31	585

SECTION C MODIFIED EQUITY CAPITAL

		BIL	MIL	THOU
Perpetual Preferred Stock	012			
Common Stock:				
Par Value	020			1
Paid in Excess of Par	030			799
Retained Earnings	115			83
TOTAL MODIFIED EQUITY CAPITAL (801 = 012 thru 115)	801		1	083
TOTAL LIABILITIES AND MODIFIED EQUITY CAPITAL (810 = 400 + C801)	810		32	668

MEMO ITEMS

CALCULATION OF REGULATORY CAPITAL:				
Modified Equity Capital (C801)	952		1	083
Adjustments to Modified Equity Capital for Institutions Reporting on a GAAP Basis	954			
Definitional Capital (B380)	956			
Qualifying Pledged Deposits	958			
General Valuation Allowances (K360)	960			80
Risk Analysis Reporting (RAR) Items:				
Approved Equity Capital	962			
RAR/GAAP Differences:				
Sales of Real Estate	966			
Futures Transactions	968			
Accretion/Amortization of Discounts/Premiums	970			
Loan Origination and Commitment Fees	976			
Accounting Forbearances:				
FSLIC Capital Contributions	978			954
Amortization of:				
Goodwill	982			
Premiums and Discounts	984			
Other Accounting Forbearances	986			
TOTAL REGULATORY CAPITAL (950 = 952 thru 986)	990		2	117
Losses Unrecognized Pursuant to 561.13(a)(3)	992			

Check this item if:

1. The reporting institution is including in its balance sheet for the first time assets and liabilities acquired as a result of a merger, or
2. The reporting institution purchased or sold a branch during the quarter. 930 ☐

Check this item if Line C930 above is checked and the merger was accounted for under the purchase method of accounting 940 ☐

If the reporting institution restated its balance sheet for the first time this quarter as a result of applying push-down accounting, enter the date of the reorganization. (State numerically)

	Month	Day	Year
948			

Annual Closing Date (Show month and day numerically; e.g., December 31 should be shown as 12/31.)

	Month	Day
950	6	30

501

FEDERAL HOME LOAN BANK BOARD
THRIFT FINANCIAL REPORT
Statement of Condition
As of March 31, 1989

District/Docket Number
11/07046

COAST SAVINGS AND LOAN
P.O. BOX 9119
VAN NUYS, CA 91409
Transmitted 04/20/89 at

CAPTION A
29
ALL-STATE LEGAL SUPPLY CO

(REPORT IN THOUSANDS OF DOLLARS)

Prepared by: PAULINE CRANE Tel: (818) 366-2500

SECTION A - ASSETS

		Bil,Mil,Thou
MORTGAGE LOANS, CONTRACTS AND MORTGAGE POOL SECURITIES		
CONSTRUCTION LOANS ON:		
1-4 Dwelling Units	(022)	2,310
5 or More Dwelling Units	(024)	17,700
Nonresidential	(026)	128,759
PERMANENT MORTGAGES ON:		
1-4 Dwelling Units:		
First Mortgages and Closed-End Junior Liens	(031)	4,546,493
Revolving, Open-End Loans	(033)	32,663
5 or More Dwelling Units	(034)	2,815,308
Nonresidential (Except Land)	(036)	1,649,601
Land	(050)	17,355
MORTGAGE POOL SECURITIES:		
Insured or Guaranteed by an Agency or Instrument of the United States	(070)	1,314,709
Privately Issued	(080)	10,797
ACCRUED INTEREST RECEIVABLE	(090)	122,354
ADVANCES FOR TAXES AND INSURANCE	(100)	3,025
CONTRA-ASSETS TO MORTGAGE LOANS, CONTRACTS, AND MORTGAGE POOL SECURITIES:		
Loans in Process	(110)	26,247
Unamortized Yield Adjustments	(121)	39,972
Valuation Allowances for Mortgages Held For Sale	(129)	0
Other Valuation Allowances	(131)	60,615
NET MORTGAGE LOANS, CONTRACTS, AND MORTGAGE POOL SECURITIES (140 = 022 thru 100 minus 110 thru 131)	(140)	10,534,240
NONMORTGAGE LOANS		
COMMERCIAL LOANS:		
Secured (Other than Mortgage)	(150)	1,618
Unsecured	(160)	1,424
CONSUMER LOANS:		
CLOSED-END:		
Loans on Deposits	(170)	23,108
Home Improvement Loans	(180)	0
Education Loans	(190)	0
Auto Loans	(200)	0
Retail Mobile Home Loans	(230)	1,941
Other	(210)	0
OPEN END:		
Revolving Loans Secured by 1-4 Dwelling Units	(218)	0
Credit Cards and Other	(221)	0
FINANCING LEASES:		
Consumer	(240)	0
Nonconsumer	(250)	0
ACCRUED INTEREST RECEIVABLE	(260)	606
CONTRA-ASSETS TO NONMORTGAGE LOANS:		
Loans in Process	(270)	0
Unamortized Yield Adjustments	(281)	0
Valuation Allowances	(290)	0
NET NONMORTGAGE LOANS (300 = 150 thru 260 minus 270 thru 290)	(300)	28,697
MEMO ITEMS		
Troubled Debt Restructured:		
During the Quarter	(905)	0
Cumulative Outstanding Balance	(906)	78,357
acilitated Sales of Real Estate	(907)	23,312
Securities Reported in Section A issued by REMICs	(908)	310,093

		Bil,Mil,Thou
REPOSSESSED ASSETS AND OTHER REAL ESTATE		
Repossessed Real Estate	(310)	25,371
Other Repossessed Assets	(320)	0
Real Estate Held for Development/ Investment/Resale:		
Residential Property	(342)	0
Nonresidential Property	(344)	3,382
Valuation Allowances	(355)	778
CASH, DEPOSITS, & INVESTMENT SECURITIES		
Cash and Noninterest-Earning Deposits	(360)	121,849
U.S. Government and Agency Securities	(370)	0
Equity Securities, Except FHLB Stock	(382)	8,004
Mortgage Derivatives:		
CMOs	(385)	297,458
Principal-Only (PO) Strips	(388)	19,215
Interest-Only (IO) Strips and Residuals	(389)	26,710
Other Investment Securities & Deposits	(391)	655,558
Accrued Interest Receivable	(390)	10,769
Valuation Allowances	(400)	10,418
SERVICE CORPORATIONS, SUBSIDIARIES		
Equity Investment	(406)	641,450
Unsecured Loans	(408)	0
Valuation Allowances	(409)	44
FIXED ASSETS, Net of Depreciation		
Office Buildings and Land	(410)	32,410
Leasehold Improvements	(420)	34,020
Furniture, Fixtures, and Equipment	(440)	33,781
OTHER ASSETS		
Financial Futures/Options:		
Initial Margin	(460)	0
Maintenance Margin	(470)	0
Financial Options Fees Paid	(480)	0
Deferred Net Losses (Gains) on Futures/Options Hedging Assets	(510)	0
Deferrals Pursuant to SFAS 14	(525)	0
Intangible Assets:		
Purchased Loan Servicing	(542)	0
Goodwill and Other	(544)	232,075
Leased Property:		
Consumer	(550)	0
Nonconsumer	(560)	0
Excess Loan Servicing	(578)	0
Other Assets	(580)	235,319
Valuation Allowances	(590)	0
TOTAL ASSETS (800=140+300+310 thru 344+360 thru 390+406+408+410 thru 580 minus 355, 400, 409, 590)	(800)	12,930,074
MEMO ITEMS		
Amount Eligible for Regulatory Liquidity	(900)	533,918
Assets Acquired For Stock:		
Real Estate	(910)	0
Other	(920)	0
FHA/VA & Other Federally Insured or Guaranteed Loans Included on Lines A022 thru A050	(935)	59,047
Debt Securities Rated Below Investment Grade, Plus Those Held by Service Corporations/Subsidiaries	(936)	149,591
Foreign Loans and Investments Included in Section A	(938)	758
Check This Item if the Reporting Institution Has Any Ownership interest in a Service Corporation, Subsidiary, or Real Estate Joint Venture (Except Finance Subsids.)	(941)	X

503

000028

FEDERAL HOME LOAN BANK BOARD
THRIFT FINANCIAL REPORT
Statement of Condition
As of March 31, 1989

District/Docket Number
11/07046

COAST SAVINGS AND LOAN
P.O. BOX 9119
VAN NUYS, CA 91409
Transmitted 04/20/89 at 14:33

(REPORT IN THOUSANDS OF DOLLARS)

Prepared by: PAULINE CRANE Tel: (818) 366-2800

SECTION B
LIABILITIES

		Bil,Mil,Thou
DEPOSITS		
With Balances Less than $80,000	(012)	6,040,955
With Balances $80,000 to $100,000	(014)	1,112,441
With Balances greater than $100,000:		
Negotiable Certificates (Transferable Ownership) With Original Maturities of 3 Months or Less	(016)	359,910
Other - Greater than $100,000	(018)	1,546,706
BORROWINGS		
FHLBank Advances	(020)	1,795,250
Other Borrowed Money:		
Commercial Bank Loans	(030)	0
Reverse Repurchase Agreements	(040)	517,878
Retail Repurchase Agreements	(050)	0
Overdrafts in Transaction Accounts	(060)	33,339
Commercial Paper Issued	(070)	0
Subordinated Debentures (Incl. Mandatory Convertible) Not Qualifying as Definitional Capital	(080)	0
Mortgage-Backed Securities Issued:		
CMOs	(092)	0
Other	(096)	28,208
Other Borrowings	(100)	590,453
UNAMORTIZED YIELD ADJUSTMENTS ON PURCHASED DEPOSITS AND BORROWINGS	(102)	(651)
OTHER LIABILITIES		
Accrued Interest Payable	(110)	19,723
Accrued Interest on Deposits	(120)	21,400
Dividends Payable on Stock	(130)	0
Accrued Taxes	(140)	0
Accounts Payable	(150)	94,913
Advance Payments by Borrowers for Taxes and Insurance	(160)	3,061
Financial Options Fees Received	(170)	0
Other Liabilities and Deferred Income	(180)	12,695
Deferred Net Gains (Losses) on Futures/Options Hedging Liabilities	(190)	0
Deferred Income Taxes	(200)	43,430
LIABILITIES EXCLUDING DEFINITIONAL CAPITAL (800 = 012 thru 200)	(800)	12,219,711
DEFINITIONAL CAPITAL		
Qualifying Subordinated Debentures	(310)	251,598
Qualifying Mandatory Convertible Subordinated Debentures	(312)	0
Qualifying Mutual Capital Certificates	(320)	0
Qualifying Redeemable Preferred Stock	(330)	0
Net Worth Certificates	(340)	0
Income Capital Certificates	(350)	0
Accumulated Annual Income Payments, not Due and Payable	(360)	0
TOTAL DEFINITIONAL CAPITAL (380 = 310 thru 360)	(380)	251,598
FSLIC Notes on Definitional Capital Instruments	(390)	0
TOTAL LIABILITIES (INCL. DEFINITIONAL CAPITAL) (400 = 800 + 380 - 390)	(400)	12,471,309

SECTION C
MODIFIED EQUITY CAPITAL

		Bil,Mil,Thou
Perpetual Preferred Stock	(012)	0
Common Stock:		
Par Value	(020)	13,110
Paid in Excess of Par	(030)	155,894
Retained Earnings	(115)	289,761
TOTAL MODIFIED EQUITY CAPITAL (801 = 012 thru 115)	(801)	458,765
TOTAL LIABILITIES AND MODIFIED EQUITY CAPITAL: (810 = B400 + C801)	(810)	12,930,074

MEMO ITEMS

CALCULATION OF REGULATORY CAPITAL		
Modified Equity Capital (C801)	(952)	458,765
Adjustments to Modified Equity Capital for Institutions Reporting on a GAAP Basis	(954)	0
Definitional Capital (B380)	(956)	251,598
Qualifying Pledged Deposits	(958)	0
General Valuation Allowances (K360)	(960)	0
Risk Analysis Reporting (RAR) Items:		
Appraised Equity Capital	(962)	0
RAP/GAAP Differences:		
Sales of Real Estate	(966)	0
Futures Transactions	(968)	0
Accretion/Amortization of Discounts/Premiums	(970)	0
Loan Origination and Commitment Fees	(976)	0
Accounting Forbearances:		
FSLIC Capital Contributions	(978)	595,863
Amortization of:		
Goodwill	(982)	0
Premiums and Discounts	(984)	0
Other Accounting Forbearances	(986)	0
TOTAL REGULATORY CAPITAL (990=952 thru 986)	(990)	1,010,246
Losses Unrecognized Pursuant to 561.12(a)(3)	(992)	0

Check this Item if: 1. The reporting institution is including in its balance sheet for the first time assets and liabilities acquired as a result of a merger, or 2. The reporting institution purchased or sold a branch during the quarter	(930)	X
Check this item if line C930 above is checked AND the merger was accounted for under the purchase method of accounting	(940)	0
If the reporting institution restated its balance sheet for the first time this quarter as a result of applying push-down accounting, enter the date of the reorganization (State numerically)	(948)	0
Annual Closing Date (Show month and day numerically; e.g., December 31 should be shown as 12/31.)	(950)	12/31

505

000029

Comptroller General
of the United States

Washington, D.C. 20648

B-240860

August 27, 1990

The Honorable Terry Sanford
Committee on Banking, Housing
and Urban Affairs
United States Senate

Dear Senator Sanford:

During the Committee's hearing of August 1 on bank and thrift fraud, you requested our opinion concerning actions the government may take to undo or restructure agreements that the Federal Savings and Loan Insurance Corporation (FSLIC) made in 1988 in order to facilitate the acquisition of troubled thrifts. You asked about the government's recourse with respect to the agreements should evidence of improper conduct by government offiicals be uncovered, and also about measures the government could take if it were to be determined that financial assistance commitments made by FSLIC were overly generous.

As explained in the enclosed analysis, provisions of FSLIC's assistance agreements permit termination of the government's obligations only in specified circumstances, including the acquirer's insolvency or failure on the part of the acquirer to comply with material terms of the agreement. However, apart from any rights afforded to the govenment under FSLIC's

agreements, well-established legal principles would permit the government to cancel any of the agreements and discontinue financial commitments thereunder on the basis of fraud or misdealing in particular transactions.

In the absence of misconduct, or circumstances which under the agreements would justify termination, the government would not be able to cancel FSLIC's agreements without exposure to potentially enormous financial liability. In making the agreements, FSLIC acted under broad statutory authority to set the terms and conditions of the assistance it would give to the acquirers of troubled thrifts. Any attempt by the government to cancel the agreements based on cost considerations or imprudent government bargaining could amount to a breach of contract and also could be challenged as an unconstitutional taking of property without just compensation.

Agreements made by FSLIC do include measures the government could use to renegotiate or restructure the terms of its financial commitments and reduce future obligations. For example, the government could prepay promissory notes FSLIC gave to the acquirers, saving future interest expenses. The government also may be able to buy back assets for which FSLIC guaranteed a particular return or yield. However, whether any of these options would make sense financially depends on the facts of the particular transaction.

Under the Financial Institution Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101-73, the Resolution Trust Corporation is charged with reviewing FSLIC's agreements in order to identify cost saving options that the government may

exercise under those agreements. We understand that the Corporation is actively conducting the review called for by FIRREA, and that it expects to report the results of its review in the near future.

We trust that this responds to your questions. By separate correspondence of today, we are providing copies of this response to Chairman Riegle and Senator Garn.

Sincerely yours,

/s/
Acting Comptroller General
of the United States

Enclosure

ANALYSIS OF THE GOVERNMENT'S LEGAL OPTIONS WITH RESPECT TO FSLIC AGREEMENTS

BACKGROUND

During 1988, the Federal Savings and Loan Insurance Corporation (FSLIC) with the approval of the Federal Home Loan Bank Board resolved approximately 220 failed savings and loan institutions. Of this total, 179 thrifts were sold to acquirers in 86 transactions.[1] In general, these transactions involved several types of agreements, including: (1) one or more "acquisition agreements," under which a troubled thrift's assets and liabilities were transferred to the acquirer; and (2) an "assistance agreement," under which FSLIC agreed to make certain contributions to the acquirer and to compensate it for future losses. The assistance FSLIC agreed to provide was generally in the form of promissory notes and guarantees rather than cash.

The terms of the acquisitions and the forms and amount of assistance FSLIC agreed to provide in the transactions we reviewed varied according to the particular transaction.[2] Typically, FSLIC provided

[1] *See Failed Thrifts: GAO's Analysis of Bank Board 1988 Deals* (GAO/T-GGD-89-11, Mar. 14, 1989).

[2] For a discussion of 15 assisted transactions in Texas, see *Failed Thrifts: Bank Board's 1988 Texas Resolutions* (GAO/GGD-89-59, Mar. 11, 1989). *See also* B-233063, Oct. 11, 1988, generally discussing FSLIC's use of promissory notes and assistance guarantees.

the thrift acquirer with a promissory note for the negative tangible net worth of the troubled thrift. Also, FSLIC's assistance agreements provided for guarantees covering net capital losses due to write-downs or sales of problem assets, yield subsidies on nonperforming assets to ensure a specifiic rate of return, and indemnification against undisclosed liabilities of or litigation against the acquired thrift.

Acquirers generally received some other benefits in addition to FSLIC assistance. In many cases, the Bank Board granted acquirers "forbearances" from supervisory or enforcement action based on the acquired thrift's failure to meet particular regulatory requirements. Following the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101-73, 103 Stat. 183, the status of some forbearances, particularly those relating to capital standards and the accounting treatment of supervisory goodwill, have been called into question.[3] Also, acquirers of troubled thrifts received several tax advantages, including the ability to exclude financial assistance from income and to carry over losses on the books of the acquired thrift.[4]

[3] On January 9, 1990, the Office of Thrift Supervision (OTS) issued a bulletin advising thrifts that FIRREA eliminated capital and accounting forbearances previously granted by the Bank Board. A number of thrift acquirers have filed lawsuits challenging the position taken by OTS, and several interim court rulings have been favorable to the acquirers. *See, e.g., Winstar Corp. v. United States*, No. 90-8C, slip op. (C1. Ct. July 27, 1990); *Far West Federal Bank v. Director, Office of Thrift Supervision*, No. 9C-103-PA, slip ops. (D. Or. May 4 and June 8, 1990).

[4] The Technical and Miscellaneous Revenue Act of 1988, enacted on Novmeber 10, 1988, reduced the tax benefits available to thrift acquirers. FIRREA repealed the special tax rules applicable to assisted acquisitions. FIRREA section 1401.

While tax benefits accrued to the acquirer, FSLIC's assistance agreements included provisions for allocating the value of these benefits between the acquirer and FSLIC.

Acquirers agreed to assume the troubled thrift's assets and liabilities and invest new capital in the thrift. With respect to assets covered by guarantees, acquirers agreed to use their best efforts in managing and disposing of the assets so as to maximize gains and minimize losses, and also to share gains on asset sales with FSLIC. FSLIC also executed "warrant agreements" with acquirers entitling it to purchase common stock in the acquired thrift.

ANALYSIS

At the outset, there is nothing in the statutes underlying the assistance agreements made by FSLIC or the changes recently effected by FIRREA that would permit wholesale cancellation of the government's obligations under the agreements. FSLIC had very broad authority to provide financial assistance to acquirers of troubled thrifts and to set the terms of such assistance under provisions of title IV of the National Housing Act, then codified at 12 U.S.C. §§ 1725, 1728, and 1729 (1982). Under section 402(d) of the Act, FSLIC was empowered to issue notes and other obligations "upon such terms and conditions as (the Bank Board) may determine." Section 406(f) of the Act allowed FSLIC, in its sole discretion, to make contributions to troubled thrifts and provide them with other forms of assistance. Under section 406(f)(2), FSLIC was authorized, in its sole discretion and under the terms and conditions it prescribed, to guarantee an institution against losses arising from its acquisition of a troubled thrift. Based

on these statutory provisions, we held in B-233063, Oct. 11, 1988, that FSLIC had the requisite authority to issue promissory notes and guarantees as part of its assisted acquisitions. In that opinion, we also held that FSLIC notes and guarantees are obligations of the United States, backed by its full faith and credit.

With the passage of FIRREA, the Federal Deposition Insurance Corporation became responsible for administering FSLIC's assistance agreements and satisfying FSLIC's debts and liabilities from the newly established FSLIC Resolution Fund. FIRREA section 215. The Act explicitly preserved the rights, duties, and obligations of FSLIC and other persons arising under "any section of title IV of the National Housing Act," which, as discussed above, authorized FSLIC's assistance agreements. FIRREA section 401(f). While the Resolution Trust Corporation (RTC) was charged with reexamining FSLIC's agreements for purposes of identifying cost saving measures and exercising options for reducing costs, the specified options do not include cancellation of the agreements.[5]

The terms of assistance agreements we reviewed allow the government to terminate obligations under the agreements only in specified circumstances, including the acquirer's insolvency or failure on the

[5] Under section 21A(b)(11)(B) of the Federal Home Loan Bank Act, added by section 501(a) of FIRREA, RTC is required to exercise "any and all legal rights to modify, renegotiate, or restructure [FSLIC's] agreements where savings would be realized by such actions." The conference report's explanation of this provision makes clear that the rights RTC may exercise are those that would have been available to FSLIC under the agreements. H.R. Rep. No. 209, 101st Cong., 1st Sess. 414 (1989).

part of the acquirer to comply with material terms of the agreement. Assistance agreements may include a provision terminating the agreement as a whole if both parties have agreed to do so. Additionally, FSLIC and the acquirer may vary specific aspects of assistance agreements upon reopening negotiations of the parties. In certain circumstances, discussed below, FSLIC may vary the terms of its assistance obligations by unilateral action.

Of course, apart from any rights afforded to the government under the terms of FSLIC's assistance agreements, the government would be able to cancel any agreement and discontinue its financial commitments thereunder if evidence of fraud or misdealing with respect to the agreement was uncovered. The courts have held that any government contract tainted by fraud or misdealing may be canceled by the government and, depending on the facts of the case, the government may be able not only to disengage itself from future financial commitments but also to recover any payments previously made. *See J.E.T.S. v. United States*, 838 F.2d 1196 (Fed. Cir. 1988); *K & R Engineering Co. v. United States*, 616 F.2d 469 (Ct. Cl. 1980). The courts have also held that the government may cancel any contract in which a government official had a conflict of interest, even if the party contracting with the government was not guilty of wrongdoing. *United States v. Mississippi Valley Generating Company*, 364 U.S. 520 (1961). *See also K & R Engineering Co.*, cited above. Additionally, other types of illegality in the making or performance of a government contract will provide a basis for cancellation by the government. *See, e.g., Alabama Rural Fire Ins. Co. v. United States*, 572 F.2d 727 (Ct. Cl. 1978).

In the absence of fraud or misdealing, or circumstances justifying termination under the provisions of FSLIC's agreements, the government could cancel the agreements only with exposure to potentially enormous financial liability. The Supreme Court has held that, when the government enters into a contract, it ordinarily incurs responsibilities similar to those of a private person who is a partly to the contract. *Lynch v. United States*, 292 U.S. 571 (1934); *Perry v. United States*, 294 U.S. 330 (1935). Thus, if the government terminates a contract without justification, such termination is a breach of contract and the government becomes liable for all damages resulting from the breach. *United States v. Behan*, 110 U.S. 338 (1884); *United States v. Spearin*, 248 U.S. 132 (1918).

Furthermore, although Congress could enact legislation cancelling the assistance agreements, the enactment of any such legislation could be subject to challenge on constitutional grounds. The courts have held that contractual rights against the government are Fifth Amendment property interests that cannot be taken without just compensation and, therefore, that congressional power to abrogate government contracts is narrowly circumscribed. *Lynch v. United States*, 292 U.S. 571 (1934); *Perry v. United States*, 294 U.S. 330 (1935); *Larionoff v. United States*, 533 F.2d 1167 (D.C. Cir. 1976). The courts have also stated that although Congress may constitutionally impair existing contract rights in the exercise of a paramount government power such as the "war power," Congress does not have the power to repudiate the government's contractual obligations solely in order to save money. *Lynch*, cited above, 292 U.S. at 580; *Larionoff*, cited above, 533 F.2d at 1179-80.

As we indicated above, there are measures the government can take short of cancelling FSLIC's assistance agreements in their entirety in order to reduce the government's future expenses. For example, provisions in many agreements allow the government to purchase or require the sale of assets for which assistance has been guaranteed, thus eliminating the need for future yield maintenance payments and capital loss coverage. Also, the terms of FSLIC's negative net worth notes may provide for early payment on the notes, saving the government future interest expenses.

Whether the government's use of options mentioned above makes sense financially depends upon the facts of each transaction. As discussed previously, FIRREA requires the RTC to review FSLIC's agreements in order to identify and exercise cost-saving options available under those agreements. We understand that the RTC is actively conducting the review called for by FIRREA, and that it expects to report the results of its review in the near future.

IN THE UNITED STATES CLAIMS COURT

No. 90-CV-773C
Chief Judge Loren Smith

STATESMAN SAVINGS HOLDING CORP.
405 Sixth Avenue
Des Moines, Iowa 50309,

and

THE STATESMAN GROUP, INC.
405 Sixth Avenue
Des Moines, Iowa, 50309,

and

AMERICAN LIFE AND CASUALTY INSURANCE COMPANY
601 Locust Street
Two Ruan Center, Suite 1400
Des Moines, Iowa 50309,
Plaintiffs,

v.

UNITED STATES OF AMERICA
Defendant.

AFFIDAVIT OF D.J. NOBLE IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY

D.J. Noble, being duly sworn, upon his oath deposes and says:

1. I am D.J. Noble, Chairman of the Boards of The Statesman Group, Inc. ("Statesman Group"), American Life and Casualty Insurance Company ("American Life"), Statesman Savings Holding Corp. ("SSHC") and Statesman Bank for Savings, FSB ("Statesman Bank").

2. I submit this Affidavit in support of the Plaintiffs' Motion for Summary Judgment as to Liability. I am familiar with the matters set forth herein from my own personal knowledge and from a review of materials in the files and possession of Statesman Group.

3. Statesman Bank was chartered by the Federal Savings and Loan Insurance Corporation ("FSLIC") on March 11, 1988 for the purpose of acquiring four insolvent savings associations. Statesman Bank acquired by merger First Federal Savings Bank, of Waterloo, Iowa ("First Federal"), Peoples Federal Savings and Loan Association, of Waterloo, Iowa ("Peoples"), and The Perpetual Savings and Loan Association, of Waterloo, Iowa ("Perpetual") (collectively, the "Waterloo Institutions"), and by a pass-through receivership, Statesman Bank also acquired First Federated Savings Bank, of West Palm Beach, Florida ("Federated").

4. SSHC was organized by Statesman Group and American Life under the laws of Iowa for the purpose of becoming the direct holding company of Statesman Bank. SSHC owns one hundred percent (100%) of the

issued and outstanding common stock of Statesman Bank, is entitled to receive all dividends declared by Statesman Bank, and has the right to receive the net assets of Statesman Bank upon the liquidation, dissolution or winding up of the affairs of Statesman Bank. American Life, a corporation organized under the laws of Iowa, owns all of the outstanding common stock of SSHC. Statesman Group, a publicly-owned corporation organized under the laws of Delaware, owns all of the outstanding preferred stock of SSHC and indirectly owns all of the outstanding common and preferred stock of American Life.

5. In 1987, Statesman Group became aware of the existence and availability of Federated Financial Corporation, a mortgage banking company located in Atlanta, Georgia. At that time, Statesman Group owned controlling interest in Statesman Mortgage Company, a mortgage banking company which was engaged in the servicing of single-family real estate loans. It was our objective to acquire by merger or acquisition another mortgage servicing company in order to increase the size of Statesman Mortgage Company's mortgage servicing portfolio. Federated Financial Corporation, a subsidiary of Federated, was insolvent at that time. Under my direction, Statesman Group made inquiry to the FHLBB in Atlanta, Georgia regarding the possibility of acquiring Federated Financial Corporation with governmental assistance. We were advised that neither FSLIC nor FHLBB could grant financial assistance to aid such an acquisition because Federated Financial Corporation was not an insured depository institution, even though it was a subsidiary of such an institution. We were ultimately directed to government personnel in Washington, D.C. to further discuss the possibility of such an acquisition. This then led to discussions with

representatives of FSLIC, which were the beginning of the discussions and negotiations which ultimately led to the acquisition of the four insolvent thrifts.

6. In preliminary discussions, FSLIC confirmed that although federal laws would not allow FSLIC to grant assistance to acquire the insolvent subsidiary of Federated, it could assist in the acquisition of Federated itself, which would then include its mortgage banking subsidiary. FSLIC further advised that because Statesman Group owned an investment banking company, R.G. Dickinson & Co. (a regional stock brokerage firm), the then-existing regulations would only permit an acquisition of an insolvent thrift by a company affiliated with an investment banking company if the thrift's assets exceeded $500 million. FSLIC suggested that it could combine Federated with other thrifts to reach the $500 million threshold. I stated that Statesman Group was interested in owning a thrift, but only if it could have its home office in Des Moines, Iowa. Accordingly, FSLIC "packaged" Federated with the Waterloo Institutions which, when combined with Federated, exceeded the $500 million threshold. FSLIC then publicized the package it had designed for Statesman Group and requested bids from other entities.

7. On January 8, 1988, Statesman Group submitted a proposal (the "Proposal") to acquire the four institutions. The Proposal called for the formation and capitalization of SSHC and Statesman Bank. SSHC was to infuse $21 million of capital into Statesman Bank, sixty percent (60%) in the form of Statesman Group preferred stock from Statesman Group and forty percent (40%) in the form of cash from American Life. Statesman Bank was to be organized and chartered by FSLIC, and then turned over as a "turnkey" operation to SSHC to be a wholly-owned

subsidiary of SSHC. The Proposal called for assistance from FSLIC in the form of cash and a Promissory Note in the total amount equal to the combined negative regulatory capital of the four thrifts. FSLIC was also to guarantee partial reimbursement of losses on certain Covered Assets, to provide payment for spread and yield maintenance on certain Covered Assets, and to provide indemnification against certain losses. P1. Exh. 1 is a true copy of Statesman Group's Proposal and business plan (the "Business Plan") which was incorporated by reference.

8. Under the Proposal, $21 million of the FSLIC cash contribution was to be a "capital credit" and would thus become a permanent part of Statesman Bank's regulatory capital and not subject to reduction through amortization. The pro forma financial statement schedules incorporated in the Business Plan specifically treated this $21 million as permanent capital, not subject to amortization.

9. The Proposal and Business Plan specified that the purchase method of accounting, which was required by FSLIC, was critical to the proposed acquisition. Under the purchase method of accounting, the book value of the assets and liabilities of an acquired institution is adjusted ("marked to market") to fair market value at the time of the acquisition, and any excess in the cost of the acquisition (including any liabilities assumed by the acquirer) over the fair market value of the acquired assets is separately recorded on the acquirer institution's books as "goodwill"—an intangible, non-earning asset subject to amortization. Goodwill recorded in connection with a supervisory merger is known as "supervisory goodwill." The Business Plan expressly contemplated that Statesman Bank would record as an

asset "[g]oodwill of approximately $25.8 million arising from the acquisition...."

10. Both the regulatory capital credit and the goodwill were critical to the transaction because they ensured that Statesman Bank would meet the prevailing regulatory capital standards after the transaction. Consistent with the conservative management style applied to the other entities it owns, Statesman Group negotiated the acquisition of the four institutions only on the basis that Statesman Bank would be in an economically-viable financial condition after the acquisition. Simply stated, Statesman Group insisted that the regulatory capital of Statesman Bank be at least twice the regulatory amount required as of the date of acquisition. We anticipated that the then-existing requirement that a thrift have regulatory capital equal to three percent (3%) of its assets would be increased to six percent (6%) of its assets, and it was an essential part of the bargain that Statesman Bank meet the six percent (6%) test at the date of acquisition.

11. The use of the capital credit for $21 million of the FSLIC cash contribution and the purchase method of accounting, including the treatment of the supervisory goodwill as an asset under regulatory accounting principles, were integral to Statesman Group's Proposal. Had Statesman Bank not been permitted to book the $21 million cash contribution as regulatory capital and record the supervisory goodwill as an asset, Statesman Group's acquisition of the institutions on the financial terms proposed would have rendered the entire transaction senseless. As chairman of the boards of the negotiating entities, I was obligated not only by business sense, but also by fiduciary responsibilities to approve an acquisition only if the transaction would be economically sound.

Without the capital credit and the supervisory goodwill, Statesman Bank would have been insolvent for regulatory purposes at the time of the acquisition and subject to receivership and liquidation by FHLBB and FSLIC on the very same day the government delivered its turnkey bank. Simply stated, Statesman Group would have never made its Proposal without the fundamental requirement that the supervisory goodwill be an asset for regulatory purposes, and that $21 million of FSLIC's cash contribution be permanent capital.

12. The Proposal also called for additional regulatory considerations and forbearances, including a Regulatory Capital Maintenance Agreement ("RCMA"), waiver of certain debt restrictions that may apply to Statesman Group, authorization of certain cross-marketing activities and affiliate transactions by entities owned by Statesman Group, and other considerations and forbearances. Statesman Group also submitted to FSLIC a holding company application, Application H-(e)-1, dated February 12, 1988, which was subsequently amended to list the affiliate transactions in which Statesman Group planned to engage (the "Application"). P1. Exh. 2 is a true copy of Statesman Group's Application, which seeks approval of the acquisition.

13. Statesman Group would not have made a proposal which did not include the requested regulatory considerations and forbearances. The entire negotiations and Statesman Group's willingness to enter into the supervisory transaction on the financial terms set forth in the Proposal were absolutely conditioned on FHLBB's and FSLIC's agreement to permit Statesman Bank to engage in the affiliate transactions that required for bearances from certain regulatory restrictions and to operate at a level of

capital which was at least twice the amount required by then-applicable regulations. Absent all of the specified regulatory considerations and forbearances, Statesman Group either would have insisted upon receiving far greater tangible financial assistance from FSLIC, such as additional cash contributions or promissory notes, or would have withdrawn the Proposal.

14. It is my understanding that no other offer was made to acquire the four institutions that were specifically packaged for Statesman Group. The FHLBB issued Resolution No. 88-169 approving the transaction stating that Statesman Group's offer was "the most desirable alternative" and presented "the lowest expense and least risk to the FSLIC of any proposal submitted for any of the Associations." Pl. Exh. 15 is a true copy of FHLBB Resolution No. 88-169.

15. After FSLIC approved Statesman Group's Proposal, the parties began negotiating the terms of the Assistance Agreement, which was one of the primary operative acquisition contracts. As those negotiations were proceeding during the first week of March of 1988, it was understood by our lawyers and the law firm representing FSLIC that a closing would take place in April. However, on Tuesday, March 8, 1988, our outside counsel in Des Moines received a telephone call from FSLIC's outside counsel advising that FSLIC was not requiring that the closing take place in Florida on Friday, March 11, 1988. Although counsel for both FSLIC and Statesman Group agreed that this was nearly an impossibility, we advised that Statesman Group would fully cooperate in an attempt to meet FSLIC's self-imposed deadline. As a result, Statesman Group personnel and its counsel went to Washington, D.C. within three hours after receiving

that telephone call and resumed negotiations and document preparation on an around-the-clock basis. However, before dispatching personnel to Washington, D.C., we received oral confirmation that FSLIC would be in a position to close the transaction, resolve all open issues, and deliver Statesman Bank in a turnkey operation on March 11. Statesman Group was put at a substantial disadvantage because of this accelerated closing. In the first place, because Statesman Group was not presently in the banking business, it did not have key officers or management in position to open the bank on Monday morning, March 14. Secondly, we were not able to establish a Des Moines, Iowa depository facility prior to closing, thus necessitating an arrangement whereby the home office was temporarily relocated to Waterloo. Thirdly, Statesman Group had not yet received permission from its primary lender to enter into the acquisition. We advised FSLIC of these facts, as well as other obstacles which would be incurred as a result of the accelerated closing, and FSLIC gave us their assurance that all such matters could adequately be handled through appropriate forbearances.

16. Throughout the entire bidding and negotiating process between Statesman Group and FHLBB and FSLIC, it was understood by all parties that the entity that acquired Federated and the Waterloo Institutions would be able to record as supervisory goodwill the amount by which the market value of the four acquired institutions' liabilities exceed the market value of their assets. Furthermore, the Resolution No. 88-169 provided at pages 19 and 20 that Statesman Bank could amortize that goodwill over a period of time not to exceed 25 years.

17. As part of the transaction, FSLIC agreed to provide assistance in the form of cash and a

Promissory Note. Under the Assistance Agreement, FSLIC agreed to provide Statesman Bank with a cash contribution of $60 million, $21 million of which was credited to Statesman Bank's regulatory capital. Also under the Assistance Agreement a $5 million ten-year Subordinated Debenture that Statesman Bank delivered to FSLIC was credited to Statesman Bank's regulatory capital. The Assistance Agreement also required FSLIC to deliver a Promissory Note in the amount of the difference between the acquired associations' negative regulatory capital and the $60 million cash provided by FSLIC. FSLIC ultimately contributed $60 million of cash and a Promissory Note of $43 million which was subsequently adjusted to a principal amount of over $55 million as its contribution under the Assistance Agreement. Pl. Exh. 10 is a true copy of the Assistance Agreement entered into by FSLIC and Statesman Bank. Pl. Exh. 11 is a true copy of the Subordinated Debenture. Pl. Exh. 12 is a true copy of the initial $43 million Promissory Note.

18. Statesman Bank entered into a separate merger agreement with each of the Waterloo Institutions setting out the terms of the acquisition (the "Merger Agreements"). Pl. Exhs. 6, 7 and 8 are a true copies of the Merger Agreements.

19. Statesman Bank also entered into an acquisition agreement with FSLIC under which Statesman Bank agreed to purchase substantially all of the assets, and to assume substantially all of the liabilities of Federated (the "Acquisition Agreement"). P1. Exh. 9 is a true copy of the Acquisition Agreement.

20. As part of the transaction, Statesman Group, American Life, SSHC and Statesman Bank entered into the RCMA with FSLIC, under which Statesman Group and American Life agreed that they would maintain the regulatory capital of the Statesman

Bank in compliance with the regulatory capital requirements defined therein. Section 2 of the RCMA defined regulatory capital to include "amounts permitted by the FSLIC in the Assistance Agreement and in the forbearances issued in connection with the transactions discussed herein." Specifically, this contract required that FSLIC credit $21 million of its cash contribution and the $5 million debenture to Statesman Bank's regulatory capital. The RCMA further provided that these computations of regulatory capital "shall be perpetual." Under that Agreement, Statesman Group and American Life guaranteed to infuse up to $4 million of additional capital into Statesman Bank and SSHC as necessary to maintain Statesman Bank's regulatory capital at the levels required therein. Also, under the RCMA, Statesman Group granted FSLIC voting rights for the stock of SSHC, to be exercised in the event that Statesman Bank should in the future fail to satisfy minimum regulatory capital requirements. It should be noted that at no time during its existence did Statesman Bank's regulatory capital, as defined in the RCMA, even approach the level which would have required Statesman Group and American Life to make an additional capital contribution. P1. Exh. 13 is a true copy of the Regulatory Capital Maintenance Agreement.

21. In a separate forbearance letter, FHLBB set forth eleven enumerated regulatory forbearances that had been negotiated and agreed upon by Statesman Group and FHLBB, and which were essential elements of the parties' contractual agreements. The forbearance letter included FHLBB's agreement (a) not to enforce for five years regulatory capital deficiencies arising from specified items, including the acquired associations' liabilities and net worth deficiency, and (b) to include $21 million of FSLIC's

contribution, and the $5 million face amount of the Subordinated Debenture, in Statesman Bank's regulatory capital. P1. Exh. 14 is a true copy of the Forbearance Letter.

22. In accordance with the agreements and documents listed above, the supervisory merger between Statesman Bank and the four insolvent institutions was consummated on March 11, 1988. Statesman Group infused $21 million into SSHC, consisting of $12.6 million from Statesman Group in the form of Statesman Group preferred stock, and $8.4 million in cash from American Life. Statesman Group also delivered Statesman Bank's $5 million ten-year Subordinated Debenture to FSLIC.

23. As a result of the acquisition, Statesman Bank included $21 million of the FSLIC cash contribution and the $5 million face amount of the Subordinated Debenture as regulatory capital. This was specifically mandated by the Assistance Agreement, RCMA, FHLBB Resolution 88-169 and the FHLBB Forbearance Letter. The $21 million cash contribution was to be permanent capital, not subject to amortization. Statesman Group's Proposal and the accompanying pro forma financial statement schedules treated this $21 million as permanent capital, without amortization. Accordingly, consistent with that Proposal, which was accepted and approved by FHLBB and FSLIC, Statesman Bank did not amortize this permanent capital. After substantial debate and exchange of correspondence between Statesman Bank and the Des Moines office of FHLBB, Statesman Bank was required by FHLBB to amortize FSLIC's $21 million capital contribution, even though this action was contrary to Statesman Group's Proposal and Business Plan, which had been approved by FHLBB and FSLIC.

24. In reliance upon FSLIC's and FHLBB's written representations concerning the use of the purchase method accounting, the assets and liabilities of the four acquired institutions were adjusted to fair market value at the time of the acquisition, and the resulting excess of liabilities over assets was recorded on Statesman Bank's books as supervisory goodwill. As previously indicated, the FHLBB Resolution No. 88-169 specifically provided that in reporting to FHLBB and FSLIC, Statesman Bank could deviate from GAAP and could amortize its supervisory goodwill over a period not to exceed 25 years on a straight line basis. Notwithstanding the foregoing, Statesman Bank elected at the outset to amortize its supervisory goodwill in accordance with Generally Accepted Accounting Principles pursuant to Financial Accounting Standards Board Statement No. 72. This Statement provides that such goodwill is to be amortized over the estimated remaining lives of the long-term interest-bearing assets acquired on a level yield basis. Statesman Bank's Proposal and Business Plan provided for amortization over twelve years. Even though this Proposal was submitted far in advance of FHLBB's resolution allowing amortization over 25 years, Statesman Bank believed that it should amortize in accordance with its Business Plan which had been approved by FSLIC. The amount of supervisory goodwill ultimately recorded by Statesman Bank as a result of the acquisition was $27,874,583.

25. The passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), which was signed into law on August 9, 1989, imposed a dramatic change in the capital requirements of savings associations by adding Home Owners Loan Act § 5(t). FIRREA, and its implementing regulations, established three separate capital

requirements, all of which had to be met in order for a savings association to be in capital compliance. In essence, depending upon the specific requirement, supervisory goodwill was excluded for the most part in calculating capital under FIRREA. This meant that, absent any agreements to the contrary, the unamortized remaining supervisory goodwill acquired as a result of the purchase method of accounting *and* the unamortized portion of the $21 million capital credit (deemed by FIRREA regulations to be goodwill) had to be excluded in determining Statesman Bank's regulatory capital. As of September 30, 1989, the end of the last reporting period prior to the effective date of FIRREA, Statesman Bank's regulatory capital was $53.2 million, which was $15.8 million in excess of its pre-FIRREA required minimum of $37.4 million. Under the FIRREA tangible capital requirement, as interpreted by the Office of Thrift Supervision ("OTS"), the successor to FHLBB, Statesman Bank had *negative* tangible capital of $4,577,000. This dramatic overnight change in the capital position of Statesman Bank was the result of the refusal by OTS to honor the FSLIC and FHLBB agreements to record the acquired supervisory goodwill as an asset and to allow the $26 million of capital credits as part of Statesman Bank's capital.

26. As a sole result of OTS's refusal to honor the contractual commitments of FSLIC and FHLBB in computing capital, and its opinion that those contractual obligations were superseded by FIRREA, OTS concluded that Statesman Bank failed to meet any of the FIRREA capital requirements. The deficiencies in capital under the three tests were: (1) tangible capital deficiency of $13,852,000; (2) leverage ratio deficiency of $13,247,000, and (3) risk-based capital deficiency of $14,576,000, based upon September 30,

1989 computations. The new capital standards destroyed the financial well-being in regulatory terms of Statesman Bank, despite the fact that it was financially sound and conservatively managed.

27. If the FIRREA capital standards were applied retroactively to Statesman Bank as of the March 11, 1988 date of acquisition, and the contractual obligations to count supervisory goodwill and the capital credits were ignored, as they now have been, Statesman Bank would have had *negative* tangible capital of $8.9 million as of that date. In other words, Statesman Bank would have been insolvent at the very moment it was created. Clearly, therefore, the crediting of FSLIC's $21 million cash contribution and the $5 million Subordinated Debenture to Statesman Bank's permanent capital, and the booking of the $27.9 million of supervisory goodwill as an asset were relied upon by Statesman Group in evaluating and consummating the acquisition. Statesman Group would have never entered into such a transaction, and I do not believe that FSLIC or FHLBB would have authorized a transaction which would have immediately put Statesman Bank in a position of being taken over by the government. Thus, the willingness of Statesman Group and American Life to invest $21 million in cash and stock in Statesman Bank was absolutely conditioned on FHLBB's and FSLIC's agreement to permit Statesman Bank to report FSLIC's $21 million cash contribution and the $5 million Subordinated Debenture as regulatory capital and to amortize the $25,874,583 of supervisory goodwill over time. Absent the specified accounting treatment, Statesman Group either would have insisted upon receiving more than the $115 million in immediate tangible financial assistance from FSLIC or would have withdrawn the Proposal.

28. Statesman has complied in good faith with all the terms and conditions of the agreements relating to the supervisory merger and has otherwise fully performed its undertakings in connection therewith.

29. Since the acquisitions, Statesman Bank has performed well, achieving the purposes of the acquisitions. From March 11, 1988 through May 31, 1990, Statesman Bank reported a cumulative loss of approximately $4.7 million. This loss principally resulted from goodwill amortization of $7.3 million and $2.1 million loss provision related primarily to assets acquired on March 11, 1988, which did not reflect an actual current period loss, but rather, a re-evaluation of opening loss reserves. Also included in the financial results was an income-sharing payment to FSLIC in 1988 and interest payable to FSLIC under the Subordinated Debenture. On the other hand, extraordinary gains on the sale of investment securities, buildings and improvements and service corporation investments aggregated $2,319,000. If the foregoing amortization, extraordinary income and extraordinary expenses are eliminated, Statesman Bank actually earned a profit of $3,285,000 through May 31, 1990. This profit would have been substantially higher but for the dramatic negative impact of FIRREA and the losses and expenses incurred as a result of OTS's imposition of the FIRREA regulations on Statesman Bank. During this same period of time, Statesman Bank eliminated substantial expenses of the four predecessor institutions through the merger and consolidation of operations; absorbed the cost of administering a sizable volume of non-performing assets for the benefit of FSLIC; brought significant management talent and resources into the acquired insolvent mortgage banking subsidiary and turned it into a profitable entity; and foreclosed and

liquidated a sizable amount of the mortgage loans serviced by the mortgage banking subsidiary. In short, while incurring the substantial start-up expenses in consolidating the operations of the four insolvent thrifts, Statesman Bank actually experienced a positive cash flow and increased its tangible capital position significantly. Correspondingly, by acquiring the four institutions in March of 1988, and thus preventing the necessity of liquidation by FSLIC, the acquisition not only saved FSLIC millions of dollars, but also saved the jobs of hundreds of people and preserved important services for thousands of savers, home buyers, and other customers in the communities served by the four acquired insolvent associations.

30. If FIRREA would have been in effect on the date of acquisition, Statesman Group would have required an additional $28 million of FSLIC cash or note assistance to Statesman Bank before entering any agreement to purchase the four insolvent institutions. This amount would have been necessary to put Statesman Bank in a position of having capital which was at least twice the amount required for regulatory purposes, which was an absolute condition precedent to Statesman Group's willingness to enter into the transaction. Without significant additional assistance, Statesman Bank and the transaction itself would have been financially unsound from a regulatory standpoint.

31. In entering into the acquisition, Statesman Group acquired an asset (Statesman Bank) which it reasonably believed would provide a reasonable rate of return on its investment and, at the same time, provide a financial service institution which would complement the other subsidiaries of Statesman Group through cross-marketing and affiliate transactions. It is my understanding and belief that the cost

to FSLIC to have liquidated the four insolvent associations would have exceeded $200 million. By FSLIC's own admission, it saved approximately $50 million in liquidation costs by packaging these four associations and consummating the transaction with Statesman Group. This transaction, and the immense resulting cost savings to FSLIC could not possibly have occurred without the contractual commitments of FSLIC and FHLBB to permit capital credits in the amount of $26 million and to permit the carrying of the supervisory goodwill of $27.9 million as an asset of Statesman Bank. These agreements by FSLIC and FHLBB did not cost the government any money, but provided the essential consideration which induced Statesman Group to enter into the acquisition agreements.

32. Because OTS, subsequent to FIRREA, has repeatedly refused to count the $26 million of capital credits received by contract in the acquisition, and disallowed the supervisory goodwill, Statesman Bank does not satisfy the three new capital standards of FIRREA. Accordingly, Statesman Bank was subjected to restrictions and penalties relating to FIRREA's capital requirements solely because of the repudiation of FSLIC's and FHLBB's agreements with Statesman Group.

33. On January 5, 1990, Statesman Bank submitted a Capital Plan, together with a proposed modification and extension of the March 1988 acquisition agreements. This filing was made in response to a letter "notification" from Steven L. Opsal, Supervisory Agent with OTS in which OTS advised Statesman Bank that as a "troubled" institution, it was subject to OTS's revised growth restrictions policy which "supersedes any growth restrictions to which you may have been subject." The letter also directed

Statesman Bank to submit a Capital Plan by January 8, 1990. P1. Exh. 17 is a true copy of the OTS notification letter. P1. Exh. 18 is a true copy of Statesman Bank's Capital Plan.

34. Consistent with its requirements in the original acquisition, Statesman Group and Statesman Bank, in their Capital Plan, utilized a conservative approach which required that the capital be raised to a level which would be at least twice the amount of the prevailing regulatory requirement. By letter dated March 13, 1990, from Richard G. Sheppard, Deputy District Director of the Des Moines office of OTS, Statesman Bank's Capital Plan was denied. Accordingly, Statesman Bank was immediately subjected to lending and investment restrictions because it did not, according to OTS, meet the FIRREA capital standards. P1. Exh. 19 is a true copy of this OTS denial letter.

35. As a result of the denial by OTS of Statesman Bank's Capital Plan, Statesman Bank submitted to OTS a written demand ("Demand") that OTS calculate its capital in compliance with the contractual obligations undertaken by FSLIC and FHLBB at the date of acquisition. Specifically, the Demand required that the contractual capital credits of $21 million in FSLIC cash contribution and the $5 million Subordinated Debenture continue to be counted as capital. Although Statesman Bank also believed that it was entitled to continue to report as an asset its supervisory goodwill acquired through the purchase method of accounting, the Demand focused solely on the breach by OTS of the FSLIC and FHLBB contractual commitments to perpetually credit to Statesman Bank's capital the remaining unamortized portion of the original $26 million capital credits. Those capital credits were required by the Assistance

Agreement, RCMA, FHLBB's Resolution 88-169 and the Forbearance Letter from FHLBB. The Demand demonstrated that if OTS would simply adhere to these contractual obligations alone, Statesman Bank would meet all three FIRREA capital standards. By letter dated April 2, 1990, from Donald W. Wente, District Director of the Des Moines office of OTS, that Demand was denied. In doing so, OTS did not respond to the contractual issue, but merely claimed that FIRREA eliminated all previously granted capital and accounting forbearances. In other words, OTS took the position that as to the government, its contracts were mere forbearances subject to change. P1. Exh. 20 is a true copy of Statesman Bank's Demand. P1. Exh. 21 is a true copy of this OTS denial letter. At no time did Statesman Group ever believe that FSLIC or FHLBB, or their successors-in-interest, would be able to breach their contractual commitments regarding the crediting of permanent capital to Statesman Bank and the allowance of supervisory goodwill as assets of Statesman Bank. We did recognize that changes in the law could occur which could impact regulatory requirements. This is one reason why we insisted that Statesman Bank's regulatory capital be twice the amount required. This is also the reason that we insisted that the crediting of the capital and the allowance of supervisory goodwill be incorporated into the written contractual agreements. Accordingly, it was, and is still our belief, that the subsequent enactment of FIRREA, which did in fact change the requirements, does not authorize OTS, as the successor to FHLBB, to disavow its contractual obligations.

36. Because of the denial by OTS of Statesman Bank's Capital Plan and its Demand to compute capital in compliance with the acquisition contracts,

OTS advised Statesman Bank in March of 1990 that it was a savings association "subject to greater restrictions" under Regulatory Bulletin 3a-1. As a result, numerous lending, investment and other restrictions were imposed upon Statesman Bank. These restrictions caused Statesman Bank to be at a substantial competitive disadvantage in the marketplace. The utilization of FIRREA as a means to breach its contractual obligations to Statesman Bank, and thus conclude that Statesman Bank did not meet the capital requirements, resulted in OTS taking an even more active role in the direction and control of Statesman Bank's business operations.

37. Statesman Bank's managerial discretion, which has produced a record of conservative, sound and efficient management, was greatly circumscribed. In addition, the collateral consequences of the restrictions imposed by FIRREA and the OTS capital regulations were equally damaging. For example, Statesman Bank's ability to attract and retain deposits, as well as its ability to borrow in capital markets, was impaired. The restrictions also reduced Statesman Bank's ability to generate profitable mortgages and other loans, reduced its access to secondary mortgage markets, and impaired its ability to generate profits. The asset growth restrictions reduced Statesman Bank's ability to obtain the advantages of growth available to thrifts, banks and other financial institutions competing with it for the provision of mortgages and other loans and services in its market area. Moreover, the restrictions imposed under FIRREA and the OTS capital regulations impaired Statesman Bank's ability to serve the needs of savers and home buyers in its market area. In these and countless other ways, Statesman Bank was denied the benefits of including its supervisory

goodwill, the $21 million capital credit and the $5 million face amount of the Subordinated Debenture in capital for purposes of complying with regulatory capital requirements—benefits that Statesman Group contracted for in their agreements with FSLIC and FHLBB.

38. Throughout the history of Statesman Bank's relationship with the Des Moines office of FHLBB, and its successor, OTS, Statesman Bank met continuing resistance in its efforts to conduct its operations in a manner consistent with the acquisition agreements. The acquisition was negotiated with the Washington office of FSLIC and approved by the Washington office of FHLBB. Unlike many other acquirers of insolvent associations, Statesman Group was not currently in the banking or thrift industries. Nevertheless, Statesman Group was accustomed to governmental regulatory supervision by virtue of its insurance, investment banking and mortgage banking subsidiaries. It was my understanding that FSLIC was attempting to attract capital from sources outside the existing thrift industry for the acquisition of insolvent thrifts during 1988, and the consummation of the transaction with Statesman Group might prompt other outside investors to acquire such thrifts, thus bringing new sources of funds to help minimize the growing savings and loan problem.

39. By way of illustration of the interference caused by FHLBB and OTS, I would like to refer to the situation involving the establisment of the home office in Des Moines, Iowa. Because of the accelerated closing of the acquisition, Statesman Bank had not yet had the opportunity of establishing a depository facility in Des Moines. I had made it perfectly clear to FSLIC that Statesman Group would not consummate the acquisition unless it had an absolute guarantee

that the home office of Statesman Bank would be in Des Moines. FSLIC advised that it was necessary to have a depository facility in the city in which the home office was located. In order to accommodate the accelerated closing, FSLIC gave me its assurance that the home office would be in Des Moines, and that FSLIC would establish a procedure by which this could be automatically accomplished. I advised FSLIC that under no circumstances would Statesman Group go through the traditional application procedures for establishing a different home office location once the acquisition was completed. In compliance with its representations regarding this issue, FSLIC chartered the bank with its home office in Des Moines. Also at page 35 of FHLBB's Resolution No. 88-169, FHLBB dealt with this issue and stated as follows:

> RESOLVED FURTHER, That New Federal's (Statesman Bank) home office is hereby temporarily redesignated to be located in Waterloo, Iowa, and such location shall revert to Des Moines, Iowa, upon New Federal's selection of a site there and the PSA's approval of such site.

It was agreed that the only thing necessary to relocate the home office to Des Moines was to have Statesman Bank advise FHLBB of the actual site and obtain approval for that site.

Notwithstanding the clarity and binding nature of the FHLBB resolution, OTS took the position that it was necessary for Statesman Bank to go through all of the ordinary application procedures in order to relocate its home office to Des Moines. As a result, Statesman Bank's application was protested by a citizens' group in Waterloo. This resulted in a hearing

and substantial adverse publicity to Statesman Bank regarding its lending practices. Even though the evidence demonstrated that Statesman Bank had the most favorable record of lending in low-income areas, the publicity in Waterloo had a dramatic negative impact on Statesman Bank. On two occasions, the citizens' group picketed the bank and even tied a red ribbon around the bank.

The failure by OTS to honor the FHLBB resolution regarding the home office issue caused substantial harm to Statesman Bank. This is illustrative of the substantial interference experienced by Statesman Bank and Statesman Group throughout its course of dealings with the Des Moines office of FHLBB and OTS.

Statesman Bank's initial request to relocate the home office, pursuant to the FHLBB resolution, was made on October 16, 1989. After being put through the entire hearing process, OTS did not render its final decision approving that relocation until the day before Statesman Bank was taken over by the Resolution Trust Corporation ("RTC"), which approval simply facilitated the takeover by allowing it to occur in Des Moines.

40. On July 26, 1990, the Director of OTS, by Order Nos. 90-1425 and 90-1427, appointed the RTC receiver and conservator for Statesman Bank. OTS notified Statesman Bank of its appointment on July 27, 1990 and, on that same day, RTC took possession of Statesman Bank. P1. Exh. 22 is a true copy of Order Nos. 90-1425 and 90-1427.

41. In capsule summary form, Statesman Group was desirous of acquiring the four insolvent thrifts so that it could enter the banking business and also acquire the mortgage banking subsidiary of Federated. As an inducement to Statesman Group, and as

a fundamental part of the consideration of the transaction, FSLIC agreed that $21 million of its cash contribution and the $5 million Subordinated Debenture issued by Statesman Bank would be counted by Statesman Bank as permanent capital for regulatory purposes. As further consideration for the transaction, FSLIC likewise assured Statesman Group that the supervisory goodwill acquired by Statesman Bank in the transaction would be an asset of Statesman Bank for regulatory accounting purposes. These agreements were reduced to writing in the Assistance Agreement, RCMA, FHLBB Resolution 88-169 and the FHLBB Forbearance Letter, all of which were integral parts of the contractual relationships between and among the parties. At all times subsequent to the acquisition, Statesman Bank substantially exceeded regulatory capital requirements.

FIRREA and its implementing regulations significantly changed capital requirements for thrifts. Without the benefit of the contractual obligations regarding Statesman Bank's capital credits and supervisory goodwill, Statesman Bank did not meet any of the new FIRREA capital standards. OTS, as successor to FHLBB, refused to honor the FHLBB and FSLIC contractual obligations regarding Statesman Bank's capital and found that Statesman Bank was unsafe and unsound, even though its tangible capital position continually improved from the date of the original acquisition, and thus, more safe and more sound than it was on March 11, 1988 when it was delivered to Statesman Group by the government. By breaching these contracts, OTS then appointed the RTC as receiver and conservator for Statesman Bank and took all of Statesman Bank's assets and liabilities, *including* Statesman Group's initial cash and stock contribution. In essence, the government induced

Statesman Group to invest $21 million in Statesman Bank; Statesman Group improved both the operating and financial condition of Statesman Bank, and then some 28 months later the government confiscated the bank and Statesman Group's $21 million investment.

I hereby certify that the foregoing statements are true and correct, to the best of my knowledge and belief.

Dated this 5th day of September, 1990.

/s/ D.J. Noble
D.J. Noble

Subscribed and sworn to before me this 5th day of September, 1990.

/s/ William L. Fairbank
Notary Public

My Commission Expires:
6-14-93

UNITED STATES CLAIMS COURT

Civil Action No. 90-772

GLENDALE FEDERAL BANK, FSB
700 North Brand Boulevard
Glendale, California 91201, *Plaintiff,*

v.

THE UNITED STATES, *Defendant.*

COMPLAINT

Plaintiff Glendale Federal Bank, FSB ("Glendale"), through its undersigned counsel, files this Complaint against defendant The United States, and states as follows:

NATURE AND SUMMARY OF THIS ACTION

1. This is an action for breach of contract, restitution, and deprivation of property without just compensation or due process of law. Plaintiff Glendale's claims are based upon (1) its written contract dated November 19, 1981, with the Federal Savings and Loan Insurance Corporation ("FSLIC"), an agency of the United States; (2) the breach, frustration and abrogation of that contract by the United States, acting through various agencies and officials; and (3) other government conduct resulting from or related to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"),

regulations promulgated under FIRREA, and acts and omissions of government agencies and officials relating to FIRREA and the FIRREA regulations. For relief, Glendale seeks (a) restitution of money it paid directly to FSLIC pursuant to and in accordance with Glendale's contract with FSLIC; (b) restitution of other benefits conferred upon the United States pursuant to the contract, which constitute unjust enrichment of the United States at Glendale's expense; (c) damages to compensate Glendale for the consequences of the government's breach, frustration and abrogation of the contract, the unconstitutional taking of Glendale's property, and the other unlawful government conduct described below; and (d) other appropriate contractual, declaratory, and injunctive relief.

2. In brief summary, this case involves deliberate conduct by the United States government in reneging on a fundamental contractual commitment made to Glendale. The government's conduct is especially shocking because the contract at issue facilitated the successful acquisition by Glendale, a strong and healthy thrift institution, of another thrift institution that was weak and failing, and thereby relieved the government of the burden of resolving a substantial "problem case" in the burgeoning thrift industry debacle.

3. Glendale's 1981 contract with FSLIC set forth the terms and conditions pursuant to which the United States would and did approve Glendale's acquisition of the other, failing thrift. The contract expressly incorporated the government's commitment that Glendale could count goodwill acquired in the transaction as an asset for regulatory capital purposes and amortize it over 40 years. Indeed, the United States expressly *required* that Glendale count goodwill as capital, pursuant to generally accepted

accounting principles ("GAAP") and regulatory standards, and neither Glendale nor FSLIC would have or could have approved the 1981 contract or Glendale's acquisition of the other thrift *unless* the goodwill Glendale acquired was included in regulatory capital.

4. Pursuant to the 1981 contract, Glendale paid the United States approximately $18.4 million, and Glendale has fully and faithfully performed all its other obligations under the contract.

5. The United States, however, has now reneged on its fundamental contractual commitments concerning goodwill. As a result of FIRREA, the FIRREA regulations, and government conduct following FIRREA, the United States now requires—contrary to its contractual commitment to Glendale, and contrary to GAAP principles—that most of the goodwill Glendale acquired in the 1981 transaction *not* be counted as an asset for regulatory capital purposes.

6. The effect of the government's blatant reversal is that for regulatory purposes Glendale now must *deduct* from its certified financial statements—which are prepared in accordance with GAAP and the 1981 contract—approximately $675 million in as-yet unamortized goodwill, even through the government originally promised that Glendale could include the goodwill, amortized over 40 years, as an asset for regulatory capital purposes, and even though neither FSLIC nor Glendale would have (or could have) approved or consummated the 1981 acquisition without full regulatory recognition of the goodwill Glendale acquired.

7. Even without counting the goodwill as regulatory capital, Glendale meets and will continue to meet all regulatory capital requirements imposed by FIRREA. Glendale is large enough and strong enough that the $675 million deduction now required by the

government—solely for regulatory capital purposes, and not for GAAP or any other financial reporting purposes—does not prevent Glendale from complying with FIRREA's stringent capital requirements. But the government's conduct nonetheless represents a fundamental breach, frustration and abrogation of the 1981 contract, and constitutes a deprivation of Glendale's valuable property in violation of applicable constitutional requirements. For that unlawful government conduct, Glendale seeks relief in this action—in the form of restitution of the $18.4 million Glendale paid directly to the government, and other appropriate contractual, constitutional and other relief.

JURISDICTION

8. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1491(a)(1) and (3).

THE PARTIES

9. Glendale is a federally-chartered savings bank with over $25 billion in assets and branch offices in California, Florida and Washington State. Glendale was a federally-chartered savings and loan association until 1989, when Glendale's savings and loan charter was converted to a savings bank charter with no significant effect on Glendale's operations. At all times relevant to this action, Glendale has been one of the largest thrift institutions in the country, and has been conservatively managed, well-run, profitable and devoted to serving the savings and borrowing needs of its customers.

10. First Federal Savings and Loan Association of Broward County ("Broward") was, until its merger into Glendale effective November 19, 1981, a federally-chartered savings and loan association based in Florida. Prior to the merger, Broward's deposit accounts were insured by FSLIC.

11. FSLIC was an agency of the United States until abolished by FIRREA in 1989. FSLIC insured the accounts of depositors up to $100,000 in certain savings institutions, including Broward and Glendale, and also enforced compliance by such institutions with various regulatory requirements designed to safeguard FSLIC's deposit insurance fund.

12. The Federal Home Loan Bank Board ("FHLBB") was an agency of the United States until abolished by FIRREA. FHLBB was charged with, among other things, regulating federally-chartered savings and loan associations and savings banks, acting as the operating head of FSLIC, enforcing compliance by such institutions with various regulatory requirements, and approving merger agreements for failing thrifts.

13. The Federal Deposit Insurance Corporation ("FDIC") is an agency of the United States. Under FIRREA, FDIC is designated as the successor to FSLIC for purposes relevant to this action.

14. The Office of Thrift Supervision ("OTS") is an agency and the Director of OTS is an officer and agent of the United States. Under FIRREA, OTS and its Director are designated as the successor to FHLBB for purposes relevant to this action.

15. FIRREA provides that it "shall not affect the validity of any right, duty, or obligation" of the United States, FSLIC, FHLBB, or "any other person" which arose prior to FIRREA, and that "all orders, resolutions, determinations, and regulations"

of FSLIC and FHLBB prior to FIRREA "shall continue in effect" according to their terms and "be enforceable by or against" FDIC or the Director of OTS, as the case may be, until terminated or superseded "in accordance with law."

STATEMENT OF FACTS

The Contract and its Purpose

16. On November 19, 1981, Glendale and FSLIC entered into the written contract that is at the heart of this case. That contract, titled a "Supervisory Action Agreement," expressly provided that its term would be for 10 years and that the obligations of the FSLIC under the contract could terminate earlier than 10 years after execution of the contract only under certain specified conditions, none of which have occurred.

17. The contract was subject to certain conditions, approvals and resolutions of the FHLBB, which conditions, approvals and resolutions were satisfied or obtained and are incorporated by reference as part of the contract.

18. The purpose of the contract between Glendale and the United States was to facilitate the acquisition by merger of Broward, a weak and failing savings institution, by and into Glendale, a large and healthy institution, and thereby to relieve FSLIC's potential liability as the insurer of Broward's deposit accounts on terms that made financial sense for both Glendale and the United States. To this end, FSLIC and FHLBB, as agents and instrumentalities of the United States, agreed to provide certain approvals and contractual assurances to Glendale, and Glendale agreed to certain terms and conditions required by

the United States. Among the most significant of the government's assurances was its commitment that Glendale could include the goodwill Glendale acquired in the merger as an asset for regulatory capital purposes.

The Origins of the Broward Merger

19. Unlike some other mergers of failing thrifts at the time, and an increasing number of such mergers as the savings and loan "crisis" developed through the 1980's, the merger of Glendale and Broward was a straight business deal initiated with little input from FSLIC or FHLBB. Motivated by its weakening financial condition, Broward originally contacted Glendale, and those two parties negotiated and ultimately executed the Merger Agreement pursuant to which the merger occurred.

20. FSLIC and FHLBB, however, had a vital interest in certain financial and regulatory aspects of the transaction, and Glendale was required by law to obtain FHLBB approval for the merger. FSLIC had an interest in facilitating and assisting the merger in order to avoid having to pay off Broward's depositors should Broward's financial condition continue to deteriorate. Most importantly, FHLBB and FSLIC also were interested in assuring that their agreement to extend FSLIC insurance to Glendale's deposit accounts *after* the merger would represent a prudent underwriting decision. For these reasons, the Merger Agreement between Broward and Glendale expressly conditioned consummation of the merger upon, among other things, FHLBB approval of the transaction.

21. Broward was seeking to be acquired by a stronger thrift because Broward was losing money and its financial condition was deteriorating due to adverse business conditions then confronting the

thrift industry. As a result of the unprecedented high interest rates prevailing in the late 1970's and early 1980's, Broward, like many other thrifts, was forced to pay higher interest rates to retain and attract new deposits. At the same time, it could not increase the lower rate of return on the longterm, fixed-rate residential and other real estate mortgages that constituted the bulk of its income-generating assets, nor could it originate new mortgages at a higher rate, because of Florida law's "usury" ceiling on such loans.

22. As a result of the substantial "negative spread" between Broward's cost of funds and its return on assets, in late 1981 Broward was losing about $4 million per month on operations. Significantly, unlike some other thrifts at the time—and increasingly later in the 1980's—Broward's business problems did not result from asset-quality problems such as bad loans. Broward was a conservatively managed institution that had been serving the South Florida community for more than forty years. Broward was seeking a merger partner in late 1981 not because of mismanagement or bad loans, but because of problems resulting almost exclusively from the prevailing high interest rates and Broward's resulting negative interest rate spread and significant operating losses.

23. Broward also was responsible enough to seek an early solution. At the time the merger with Glendale closed in November of 1981, Broward still had a positive net worth under GAAP of about $57 million on total assets of about $2.6 billion. At the same time, Glendale was a large and healthy thrift with about $5 billion in assets and GAAP net worth of approximately $300 million.

24. Glendale immediately became interested in the Broward merger when Broward made the initial contact, for good business reasons. Specifically, Glendale was interested in acquiring Broward because,

among other things (a) the transaction would give Glendale a major operating presence in Florida, one of the top five thrifts markets in the country, in addition to the large California market to which Glendale previously had been limited by restrictions on interstate operations by thrifts; (b) Glendale would acquire Broward's substantial deposit base, as well as Broward's substantial number of existing deposit and loan customers; and (c) by acquiring Broward on a going-concern basis, Glendale would succeed to the excellent, long-standing reputation of Broward among depositors, borrowers, the real estate industry and the entire business community in South Florida. None of these elements would have interested Glendale, however, without the commitment from the United States that the goodwill Glendale acquired in the transaction, amortized over forty years, would be included as an asset for regulatory capital purposes.

25. Though Glendale's discussions with Broward commenced and continued at a time when Broward still was viable, Broward's condition was worsening at the rate of $4 million per month. Broward's deteriorating financial condition threatened FSLIC's deposit insurance fund. Indeed, the Supervisory Action Agreement recites as a preamble that "[t]he FSLIC has decided ... to provide assistance as set forth in this Agreement, having determined that [Broward] is in danger of default and that the nature and/or amount of such assistance would be less than the losses FSLIC would sustain upon the liquidation of [Broward] through a receivership accompanied by the payment of insurance of accounts." The contemporaneous FHLBB resolution approving the merger similarly recites as a preamble that "the proposed merger and execution of [the] Supervisory Action

Agreement ("SAA") with Glendale would be undertaken pursuant to an action by the FSLIC to prevent the failure of Broward."

26. Notwithstanding the above FHLBB and FSLIC findings, at the time of the merger Broward's deposit base, Florida markets, customers and reputation were of value to Glendale, but only on the condition—required and contractually agreed to by the government—that the goodwill Glendale acquired in the merger would be included as an asset and amortized over forty years for regulatory capital purposes.

The Fundamental Terms of Glendale's Contract with the Government

27. Because of a variety of financial, regulatory and other considerations, as well as the legal requirement of FHLBB approval for the merger, Glendale understood from the outset that it would have to reach a mutually acceptable agreement with FHLBB and FSLIC concerning a number of issues. Under prevailing regulatory practices, such agreements were set forth in written contractual form.

28. As Glendale's negotiations with Broward progressed, Glendale focused on two sets of issues, both of which involved FHLBB and FSLIC and required their concurrence, that had to be addressed and resolved to make the deal work. One was the proper method of accounting for the merger and certain related financial matters, and the other was a variety of miscellaneous waivers or agreements concerning regulatory requirements that Glendale otherwise could not meet after the merger in view of Broward's condition. Glendale commenced discussions with FHLBB and FSLIC aimed at obtaining their approval and agreement on these issues.

29. The accounting issues were straightforward. Under GAAP, and in accordance with prevailing FHLBB requirements at the time of the merger, as set forth in FHLBB Memorandum R-31b, the acquisition of Broward by Glendale was to be accounted for under the "purchase method" of accounting.

30. Under purchase accounting (which, under GAAP, is applied to most corporate acquisitions in all industries), the book values of the tangible assets and liabilities of an acquired entity are adjusted to fair value ("marked to market") on the date of the acquisition. Any excess in the cost of the acquisition over the market value of tangible assets acquired is recorded as "goodwill" on the books of the acquiring institution. The cost of the acquisition includes, of course, all liabilities assumed by the acquiror.

31. As explained further below, this "goodwill" is an intangible but well-recognized and valuable asset, and as an accounting matter is to be amortized over a period of up to 40 years. In accounting terms, goodwill is classified as an "asset" because it represents something what will benefit future period—*i.e.*, the customers, deposit base, new markets and going-concern value of the acquired institution—and the period for amortization represents an estimate of the period to be benefitted by the valuable goodwill.

32. Concerning Broward, rising interest rates had caused a corresponding and significant decline in the market value of Broward's fixed-rate loans, its major assets. At the same time, the market value of Broward's liabilities (principally obligations to depositors, whose accounts by that time were variable rate) was comparable to the book value of those deposit liabilities. Accordingly, while Broward's net worth measured at book value pursuant to GAAP was

approximately $50 million, the fair value of its liabilities exceeded the fair value of its assets at the time of the merger by approximately $750 million.

33. In acquiring Broward, Glendale necessarily acquired not only its assets but also its liabilities to depositors. It was also clear under GAAP and FHLBB requirements, which prescribed purchase accounting as noted above, that Broward's assets and liabilities would be "marked to market" on the date of the merger, and thus Glendale, at closing, would place on its books $750 million more of liabilities than of tangible assets acquired from Broward.

34. Purchase accounting thus posed two fundamental issues for Glendale. First, Glendale had to decide whether it wanted in effect to pay a $750 million premium for Broward's tangible assets, by assuming $750 million more in liabilities than in assets acquired. And second, Glendale had to be certain that the goodwill it would book and amortize over forty years under purchase accounting, in the amount of $750 million, would be recognized and accepted as an asset under GAAP not only for accounting purposes but also for regulatory capital purposes. If the goodwill would not count towards meeting Glendale's regulatory capital requirements, as the tangible assets it acquired from Broward did at their book value, then Glendale faced a potential shortfall of up to $750 million in regulatory capital on the date of the merger. Glendale simply would not and could not have exchanged the book value of Broward's tangible assets, for the goodwill that GAAP and FHLBB policy provided in return, unless it was clear that both counted equally toward Glendale's regulatory capital requirements. As explained further below, FHLBB and FSLIC also would not and could not have approved the transaction, or entered into the

Supervisory Action Agreement, without the requirement that the goodwill acquired in the transaction would be recognized as part of Glendale's regulatory capital.

35. In addition to the government's assurances relating to goodwill, Glendale was willing to make the business decision to absorb the $750 million in excess liabilities only subject to another important condition. The condition was this: although Glendale was confident that it could weather the prevailing high interest rates and ultimately reverse Broward's operating losses, Glendale was not willing to take the additional risk that interest rates would stay high indefinitely, or even increase, thus compounding Broward's operating losses. Glendale therefore decided to negotiate for contractual protection, from FSLIC, against the possibility of continued and increasingly high interest rates.

36. FSLIC was willing to provide such protection, but only if Glendale in turn agreed to pay certain sums to FSLIC, according to a fixed formula, in the event interest rates declined in the years after the merger. The ultimate agreement on this point, which is expressly set forth in the Supervisory Action Agreement, represents a basic element of the agreed-upon consideration that Glendale provided the United States in return for the government's promises. That is, as consideration for the Broward merger and the government's approval of it on the terms agreed between Glendale and FSLIC, including the regulatory treatment of goodwill discussed above, Glendale agreed effectively to pay $750 million by assuming excess liabilities in that amount (and thus to relieve FSLIC of its potential exposure to pay off Broward's depositors); Glendale agreed to make the interest rate protection payments to FSLIC should interest rates

decline; and Glendale agreed to a few miscellaneous other terms of the Supervisory Agreement not relevant here. Glendale also agreed, of course, to take on the responsibility for operating Broward.

37. The interest rate protection provision provided for the only "hard-cash" financial consideration that changed hands pursuant to the Supervisory Action Agreement. Neither Glendale nor FSLIC agreed to invest any cash or other assets in Broward, and neither party agreed to pay the other any money other than pursuant to the interest rate protection provision which was negotiated and agreed as a basic condition to Glendale's agreement to assume $750 million more in liabilities than it was receiving in tangible assets.

38. Pursuant to and in accordance with Section 5 of the Supervisory Action Agreement, which contains the interest rate protection provision, Glendale paid directly to FSLIC $18.4 million in cash equivalents.

39. Glendale and FSLIC also readily reached agreement on the other fundamental issue posed by purchase accounting—the treatment of goodwill for regulatory capital purposes. Indeed, FHLBB and FSLIC had their own reasons for desiring *and requiring* that the goodwill Glendale acquired be counted as an asset for regulatory capital purposes. FHLBB was required by law to determine, on behalf of FSLIC, that FSLIC prudently could and should continue to insure the deposit accounts of Glendale after the merger. If the goodwill that Glendale acquired and recorded in accordance with GAAP and FHLBB requirements did not count as regulatory capital—that is, if Glendale was to book Broward's tangible assets at their $750 million lower market value, without including the corresponding and offsetting amount of goodwill in regulatory capital—

Glendale immediately following the merger would have had a regulatory capital shortfall of up to $750 million. In that circumstance, neither FHLBB nor FSLIC would or could have approved the underwriting decision to insure Glendale's accounts after the merger.

40. Accordingly, one of the terms and conditions expressly required by the United States for approval of the merger and for entering into the Supervisory Action Agreement was that Glendale "determine and amortize" any goodwill acquired in the transaction pursuant to GAAP and FHLBB Memorandum R31-b. Glendale readily agreed to this condition, for reasons outlined above. Indeed, without this condition, which is expressly set forth in the FHLBB resolution approving the Supervisory Action Agreement and incorporated by reference into the Agreement, the merger would have made no economic sense for Glendale and no sense, as a regulatory matter, for the FHLBB or the FSLIC. That is because, had Glendale been forced to assume all the excess liabilities of Broward without a corresponding set-off of goodwill, it would have been hopelessly under-capitalized and itself subject to regulatory takeover or other supervisory measures by the FHLBB. Neither Glendale nor FHLBB would have or could have agreed to a transaction that had that effect.

41. The Supervisory Action Agreement also was approved by the FHLBB subject to another express condition—the furnishing of a satisfactory opinion letter from Glendale's independent accountants "substantiat[ing] the reasonableness of amounts attributed to goodwill ... and the resulting amortization periods and methods." Glendale duly supplied the required opinion letter, which also expressly stated that the bulk of the goodwill acquired in the merger "will be amortized on a straight line basis over 40 years...."

42. Thus, inclusion of goodwill as an asset for regulatory capital purposes, to be amortized over forty years, was a fundamental condition of the transaction and assumption by both contracting parties, and was expressly agreed as a term of the parties' written contract. It was also the element of the contract which most fundamentally expressed the purpose of the Supervisory Action Agreement: for the United States, to safeguard depositor funds by extending FSLIC insurance to Glendale after the merger, and thereby to relieve itself of a potentially massive FSLIC obligation should Broward have to be liquidated; and for Glendale, to make the acquisition of Broward economically feasible given the financial terms dictated by Broward's financial condition. There is no question whatsoever that, without the commitment to allow Glendale to include goodwill as an asset for regulatory capital purposes, neither party could have even considered for one second the possibility of entering into the Supervisory Action Agreement.

43. As for the various miscellaneous agreements and waivers that Glendale required in order to meet applicable regulatory requirements after taking on Broward's operations, the parties had no trouble reaching appropriate terms after the fundamental issues discussed above were agreed. The Supervisory Action Agreement incorporates all of these subsidiary terms which formed a part of the contract between the parties.

Passage of FIRREA

44. In 1989, eight years after FSLIC and FHLBB entered into the contract with Glendale, FIRREA was enacted into law. FIRREA completely upset the fundamental assumptions of both parties to the

Supervisory Action Agreement. FIRREA provides, in relevant part, that goodwill such as Glendale acquired in the Broward merger, and which the FHLBB and FSLIC *required* Glendale to book and amortize over a period of up to 40 years, generally must be *deducted*—for purposes of determining compliance with OTS minimum capital requirements—from Glendale's capital as shown on Glendale's certified financial statements. The only exception provided in FIRREA permits a declining portion of goodwill to be counted for certain regulatory purposes during a brief phase-out period.

45. OTS has promulgated implementing regulations related to FIRREA's requirements regarding goodwill such as Glendale acquired in the Broward merger. As further explained below, in some respects those regulations exceed even FIRREA's requirements, and thus constitute agency action independently giving rise to Glendale's causes of action here.

Glendale's Claims for Restitution and Unjust Enrichment

46. By rescinding its contractual promise—indeed, its contractual *requirement*—that the goodwill Glendale acquired through its merger with Broward be considered as an asset for regulatory capital purposes, the United States has retroactively so altered the benefits and burdens of the bargain it struck with Glendale in 1981 as to render that agreement a nullity. With a wave of its legislative wand, the United States has transformed FSLIC's potential insurance liability owed to Broward's depositors in 1981 into a massive writedown—for regulatory capital purposes—on Glendale's books today.

47. Having rid itself of a potentially massive insurance obligation to Broward's depositors with its

contractual promise that Glendale could include goodwill as an asset for regulatory capital purposes and amortize the goodwill over a period of up to 40 years, the government has now blithely rescinded that promise. The United States today would require Glendale to retain essentially similar liabilities to those FSLIC avoided in 1981, but without the offsetting goodwill that the government originally agreed and *required* that Glendale book and without which neither party could have or would have accepted the Broward merger.

48. These actions of the United States render the "Supervisory Action Agreement" a nullity. The fundamental assumptions of the parties as to the existing facts on which it was premised have proved to be mistaken, the contract has been breached, and its basic purpose has been frustrated. For these reasons—and because Glendale would never have paid the United States the $18.4 million but for the government's commitments concerning goodwill—Glendale is entitled to restitution of the benefits it has conferred upon the United States through entering into that agreement, including, but not limited to, the $18.4 million it paid to the government as part of the mutually agreed exchange of promises and consideration. Glendale also is entitled to damages as explained further below.

Glendale's Claims For Damages

49. In contrast to the government, Glendale has duly honored and performed its contractual obligations. The merger of Broward with and into Glendale was consummated and effective on November 19, 1981, upon the terms and conditions described above as set forth in the Merger Agreement and the Supervisory Assistance Agreement.

50. Following the merger, Glendale fully and faithfully performed all of its obligations under its contract with the United States. As noted above, Glendale paid FSLIC $18.4 million, as the parties had agreed during negotiations over the effective purchase price for Broward. And Glendale scrupulously and successfully performed its fundamental obligation to operate Broward in a manner that stemmed the $4 million per month losses, and returned Glendale's "Florida Division" to profitability. Today Glendale operates the largest branch network of any thrift in Florida, and Glendale remains strong, healthy and profitable everywhere it operates—including Florida.

51. The government, for its part, has breached its contract with Glendale in ways that go beyond the requirements of FIRREA. In addition to FIRREA's express statutory terms concerning goodwill, which are summarized above, FIRRREA required the Director of OTS to promulgate regulations further elaborating the statute's regulatory capital requirements and directed that they be no less stringent than those applicable to national banks. The Directors' regulatory capital regulations became effective December 7, 1989. OTS expressly acknowledged in the Federal Register that it "arguably has flexibility" to continue to permit goodwill to be counted as an asset at least for certain regulatory capital purposes. Moreover, as OTS also acknowledged in the Federal Register, the analogous regulatory capital requirements applicable to national banks (to which FIRREA expressly refers as a model for OTS) permit goodwill to be grandfathered and thus counted as an asset at least for certain regulatory capital purposes. Nevertheless, the OTS regulations go beyond the requirements of FIRREA and the capital requirements applicable to national banks to disallow the

counting of goodwill as an asset for regulatory capital purposes even in circumstances where OTS acknowledges it has "flexibility"—i.e., discretion—and in which national banks may count goodwill as part of regulatory capital.

52. Failure to meet the new regulatory capital requirements imposed by OTS pursuant to FIRREA has severe and adverse legal, financial and business consequences. Such failure subjects a thrift institution to an extensive range of supervisory and regulatory sanctions available to the regulators of financial institutions. The threat of such regulatory action has consequences far beyond technical questions of legal compliance or non-compliance, and can harm a thrift's business operations in palpable ways.

53. Glendale fully satisfies all of the new regulatory capital requirements imposed by FIRREA and the OTS implementing regulations, even without the disallowed goodwill that the government required Glendale to book, and without which the Broward merger would have been unthinkable for both Glendale and the government. Glendale is so strong that its tangible assets, together with the percentage of its goodwill that FIRREA temporarily does allow Glendale to include as regulatory capital, are enough to satisfy the new legal requirements. But Glendale has nevertheless incurred damages as a result of the government's conduct in enacting FIRREA, and in promulgating implementing regulations that exercise OTS discretion to further disregard the goodwill that the government required and agreed that Glendale could count as an asset for regulatory capital purposes, and in implementing and enforcing the new regulatory capital regime in a manner that denies Glendale the stature, privileges and opportunities to which it is entitled as a strong, well-managed and profitable thrift institution.

54. Glendale's damages also result from the fact that the required deduction of goodwill from capital as shown on its certified financial statements, solely for regulatory capital purposes, brings Glendale closer to the line of regulatory capital compliance than it would be if the government honored its contractual obligations. As a consequence, the Director of OTS, FDIC and other government agencies and officials have denied Glendale valuable benefits and business opportunities that would have been available to Glendale had the government not reneged on its agreement. Glendale has suffered damages as a result.

55. Glendale also has had to sell and readjust certain assets, generally at a cost of over $1 million per month, in order to satisfy or assure continued compliance with the government's new regulatory capital requirements. These costs constitute contract damages that are recoverable in this action.

56. Glendale's claim for damages also rests upon the government's unconstitutional taking of its valuable property rights without just compensation and upon the government's unconstitutional abrogation and retroactive deprivation of those rights without due process. The government's contractual promises, and the now-worthless goodwill, were of significant value to Glendale, and represented settled, justified, investment-backed expectations constituting property rights. Those rights cannot be taken without just compensation and without due process of law.

COUNT I

(Restitution for Breach of Contract)

57. Plaintiff Glendale repeats and realleges here all

allegations set forth in paragraphs 1 through 56 above.

58. As a result of the passage of FIRREA and the promulgation of the OTS regulatory capital regulations, and other conduct abrogating the United States' contractual obligations and promises under the Supervisory Action Agreement, the United States breached fundamental and material terms of its contract with Glendale.

59. Because of this breach, Glendale is entitled to restitution of all benefits it has conferred upon the United States pursuant to the contract, including but not limited to the $18.4 million it paid directly to the United States. Glendale is also entitled to recover the amount by which the United States has been unjustly enriched by other benefits it received from Glendale under the contract.

COUNT II

(Restitution for Frustration of Purpose)

60. Plaintiff Glendale repeats and realleges here all allegations set forth in paragraphs 1 through 59 above.

61. The United States' agreement and requirement that purchase accounting would govern the merger, and that the goodwill Glendale acquired could be used to satisfy regulatory capital standards and be amortized over a period of up to 40 years, was a fundamental element of the parties' agreement. Glendale would not have acquired Broward, and would never have entered into the Supervisory Action Agreement or paid the government $18.4 million pursuant to that agreement, in the absence of

that element. Similarly, the United States would not have approved the merger or entered into the Supervisory Action Agreement without that element.

62. The parties to the transaction could not reasonably have foreseen government conduct that would abrogate that fundamental element of the contract.

63. The abrogation of goodwill as an asset for regulatory capital purposes by FIRREA, by the OTS regualtory capital regulation, and by other government conduct, overturns the basis of the bargain struck by the parties and frustrates its purpose.

64. As a result of this frustration of the purpose of the contract, Glendale is entitled to restitution of all benefits it has conferred upon the United States, including but not limited to the $18.4 million it paid directly to the United States and the value of all other benefits by which the United States has been unjustly enriched.

COUNT III

(Restitution as a Result of Mutual Mistake)

65. Plaintiff Glendale repeats and realleges here all allegations set forth in paragraphs 1 through 64 above.

66. Both parties to the contract assumed that Glendale could count the goodwill it acquired through its merger with Broward as an asset for purposes of satisfying regulatory capital requirements, and that the goodwill could be amortized over a period of up to 40 years.

67. Both parties were mistaken in their assumptions as to these facts which apparently existed at the

time of contracting. These assumptions went to the heart of the contract.

68. Accordingly, as a result of that mutual mistake, Glendale is entitled to restitution of the $18.4 million it paid to the United States, and of such other benefits as the United States received and by which it has been unjustly enriched.

COUNT IV

(Damages for Breach of Contract)

69. Plaintiff Glendale repeats and realleges here all allegations set forth in paragraphs 1 through 68 above.

70. By rescinding its promise to allow Glendale to count the goodwill it acquired through its merger with Broward as part of its capital for regulatory purposes and to amortize the goodwill over 40 years, the United States breached a material term of the contract.

71. As a result of that breach, Glendale has suffered damages including, but not limited to, resulting costs of over $1 million per month.

72. Because of the United States' breach of a material term of its contract with Glendale, Glendale is entitled to damages for that breach.

COUNT V

(Compensation for Taking of Property Rights)

73. Plaintiff Glendale repeats and realleges here all allegations set forth in paragraphs 1 through 72 above.

74. The goodwill that Glendale acquired through its merger with Broward constitutes valuable property under applicable law, for which Glendale paid substantial consideration.

75. By its conduct, the United States has taken this property from Glendale without providing any just compensation in return, in violation of the Fifth Amendment to the United States Constitution.

76. Glendale accordingly is entitled to recover just compensation for the property that the government has unconstitutionally taken.

COUNT VI

(Compensation for Taking of Contract Rights)

77. Plaintiff Glendale repeats and realleges here all allegations set forth in paragraphs 1 through 76 above.

78. The rights the United States conferred upon Glendale pursuant to the contract between the parties—including rights arising from the government's promise and requirement that the goodwill Glendale acquired could be counted and amortized for up to 40 years as regulatory capital—constitute valuable property.

79. The United States has taken those contractual property rights from Glendale, by enacting FIRREA, by promulgating the OTS regulations and by other conduct, but the government has provided Glendale no just compensation in return.

80. Accordingly, the Fifth Amendment to the United States Constitution requires the United States to pay just compensation to Glendale.

COUNT VII

(Damages for Deprivation of Property Without Due Process)

81. Plaintiff Glendale repeats and realleges here all allegations set forth in paragraphs 1 through 80 above.

82. The goodwill and contract rights that Glendale acquired in connection with the Broward merger constitute valuable property rights based upon, among other things, reasonable investment-backed expectations of Glendale.

83. The United States, in FIRREA, in the OTS regulatory capital regulations, and in other ways, has taken this property from Glendale in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution, and Glendale is entitled to recover all damage incurred as a result of this conduct.

COUNT VIII

(Damages for Retroactive Application of Law in Violation of Due Process)

84. Plaintiff Glendale repeats and realleges here all allegations set forth in paragraphs 1 through 83 above.

85. Glendale consummated the merger with Broward, and entered into its contract with the United States, in specific reliance upon the government's promises and requirements set forth in the contract and in prevailing statutes, regulations, and published policies having the full force and effect of law.

86. Application of FIRREA and the OTS capital regulations to deprive Glendale, retroactively, of the right it obtained in 1981 to count goodwill as capital for regulatory purposes for up to 40 years represents unduly harsh and oppressive government conduct that is arbitrary and capricious, and thus violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

87. Glendale is entitled to recover all damages it has incurred as a result of this unconstitutional retroactive application of the law.

PRAYER AND RELIEF

WHEREFORE, Plaintiff Glendale Federal Bank, FSB demands judgment against the United States:

On Count I, for restitution in the amount of not less than $18.4 million, plus interest thereon;

On Count II, for restitution in the amount of not less than $18.4 million, plus interest thereon;

On Count III, for restitution in the amount of not less than $18.4 million, plus interest thereon;

On Count IV, for damages in the amount to be proved by Glendale;

On Count V, for damages in the amount to be proved by Glendale;

On Count VI, for damages in the amount to be proved by Glendale;

On Count VII, for damages in the amount to be proved by Glendale;

On Count VIII, for damages in the amount to be proved by Glendale;

On all Counts, for such other restitutionary, compensatory, declaratory and injunctive relief as this Court may deem just and proper to make

effective the Court's judgment on Glendale's contractual, constitutional, and other claims;

On all Counts, for interest and for such cost, expenses and attorneys' fees as are warranted by law.

Respectfully submitted,

/s/ Paul G. Gaston

Paul G. Gaston
SPRIGGS & HOLLINGSWORTH
1350 I Street, N.W.
Washington, D.C. 20005
(202) 898-5800

Counsel of Record for Plaintiff
Glendale Federal Bank, FSB

Of Counsel:

Jerry Stouck
Daniel M. Press
SPRIGGS & HOLLINGSWORTH
1350 I Street, N.W.
Washington, D.C. 20005
(202) 898-5800

Dated: August 15, 1990

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND SUPERVISION

MEMORANDUM #R 31b

To: OES Professional Staff September 1, 1981

From: L. David Taylor Goodwill

SYNOPSIS: ACCOUNTING FOR GOODWILL IN ACCORDANCE WITH GAAP IS ACCEPTABLE

(Editor's Note: Memorandum #R31a, dated March 3, 1974 is rescinded)

This memorandum sets forth guidelines for the staff of the Federal Home Loan Bank Board in reviewing the proposed accounting, under generally accepted accounting principles, for goodwill arising in the acquisition of a savings and loan association. This intangible asset generally results when the purchase price for an institution exceeds the fair value of the assets acquired, reduced by the fair value of any liabilities assumed. It only arises when the accounting for a business combination is in accordance with the purchase method. Accounting Principles Board Opinion (APBO) No. 16 contains guidelines for the use of the purchase method of accounting in a business combination.

Accounting for business combinations involving insured institutions should be in accordance with generally accepted accounting principles (GAAP). APBO No. 16 indicates the conditions for using the purchase method of accounting and provides instruction in its application. Financial Accounting Standards Board (FASB) Interpretation No. 9 provides additional guidance when

applying the purchase method in a business combination involving a savings and loan association.

FASB Interpretation No. 9 describes the intangible assets and related accounting that can occur in a business combination involving a savings and loan association. It states that "the purchase price paid for a savings and loan association may include an amount for one or more factors, such as the following:

a) Capacity of existing savings accounts and loan accounts to generate future income,

b) Capacity of existing savings accounts and loan accounts to generate additional business or new business, and

c) Nature of territory served.

If the amount paid for any such factor can be determined, that amount shall not be included in goodwill. Rather, the amount paid for that separately identified intangible shall be recorded as the cost of the intangible and amortized over its estimated life."

The interpretation goes on to state that any portion of the purchase price which cannot be so assigned shall be assigned to goodwill and amortized in accordance with APBO No. 17, "Accounting for Intangible Assets." The interpretation recognizes that in some situations the amount paid for factors such as those described cannot be separately determined and, as a result, their value is included in the amount designated as goodwill.

Identifying the fair value of these or other intangible factors, whether separately identified or included in goodwill, is a subjective task. It can be based on market-

ing and other demographic studies, analysis of the resulting association's abilities to cross sell services, or analysis of past and expected behavior and lives of the acquired association's savings and loan accounts. In addition to determining the value of these intangible assets, such analyses should determine the asset's life and an appropriate amortization method to provide proper matching with the resulting income derived from the accounts. Any assumptions used in determining these amounts must be realistic in light of the resulting association's management philosophies, practices, and abilities.

In discussing the estimated life of intangible assets, APBO No. 17 indicates that "analysis of all factors should result in a reasonable estimate of the useful life of most intangible assets. As reasonable estimate of the useful life may often be based on upper and lower limits, even though a fixed existence is not determinable. The period of amortization should not, however, exceed forty years."

An application from an association requesting approval for a business combination to be accounted for by the purchase method of accounting, from which intangible assets will result, should include a description of any resulting intangible assets and the plan for their amortization. This description should discuss the nature and results of management's analysis of the underlying intangible assets and the resulting amortization periods and methods.

This memorandum does not require a change in the accounting for goodwill from business combinations which have previously been consummated. However, upon obtaining approval of the Principal Supervisory

Agent, an association may change the accounting for goodwill to comply with this memorandum.

/s/
Director

Distribution to state supervisory authorities to be made by District Director-Examinations.

Peat, Marwick, Mitchell & Co.

Certified Public Accountants
555 South Flower Street
Los Angeles, California 90071
(213) 972-4000

November 10, 1981

The Board of Directors
Glendale Federal Savings and Loan Association
Los Angeles, California

Gentlemen:

We have reviewed the proposed accounting for the acquisition of First Federal Savings and Loan Association of Broward County (Broward) by Glendale Federal Savings and Loan Association (GFS) as set forth in the "Proposed Accounting Procedures" section (copy attached) to be included in the filing with the Agreement of Merger and Supervisory Action Agreement.

The acquisition of Broward by GFS is a purchase transaction under generally accepted accounting principles (Accounting Principles Board Opinion No. 16) and accordingly the assets and liabilities will be recorded at fair value.

Any excess of fair value of liabilities over the fair value of assets will be recorded as goodwill and will be amortized in accordance with Accounting Principles Board Opinion No. 17 over its estimated useful life as described in the attached Proposed Accounting Procedures.

In our opinion, the accounting for the acquisition of Broward by GFS, as described in the attached "Proposed Accounting Procedures," is in accordance with generally accepted accounting principles.

Very truly yours,

Peat, Marwick, Mitchell & Co.

Proposed Accounting Procedures

The accounting procedures to be followed by Glendale Federal Savings and Loan Association (GFS) with respect to the acquisition of First Federal Savings and Loan Association of Broward County (Broward) by GFS are as follows:

Pursuant to the provisions of the Agreement of Merger, upon the effective date, GFS will account for the acquisition using the "Purchase Method" of accounting in accordance with Accounting Principles Board Opinion No. 16. Assets and liabilities will be recorded at their respective fair values as of the effective date of acquisition. Any excess of fair value of liabilities over the fair value of assets will be recorded as goodwill.

In accordance with Accounting Principles Board Opinion No. 17, a portion of the resulting goodwill has been associated with the savings deposit base and will be amortized on a straight line basis over 12 years, the estimated life of the savings deposit base. The remaining goodwill will be amortized on a straight line basis over 40 years as GFS believes that this remaining goodwill has an indefinite life since it is related to expansion of operations into an entirely new market area.

Discounts and/or premiums resulting from the valuation to fair value of interest bearing assets and liabilities will be accreted and/or amortized using a level yield interest method over the estimated lives of the respective assets or liabilities.

Any payments to or from the Federal Savings and Loan Insurance Corporation as a result of the Supervisory Action Agreement will be recorded to expense or income in the period in which they accrue.

AGREEMENT OF MERGER

BETWEEN

GLENDALE FEDERAL SAVINGS AND LOAN ASSOCIATION

AND

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF BROWARD COUNTY

DATED AS OF NOVEMBER 12, 1981

ARTICLE IV
CONDITIONS TO MERGER

The obligations of Glendale to complete the transactions contemplated by this Merger Agreement are subject to the satisfaction, on or before the Effective Date, of the following conditions:

4.1 *Regulatory Approval.*

The FHLBB shall have approved the transactions contemplated by this Merger Agreement to the extent required by applicable law and regulations without the imposition of any conditions to which Glendale has not agreed.

4.2 *Supervisory Action Agreement.*

The Federal Savings and Loan Insurance Corporation ("FSLIC") shall have entered into a Supervisory Action Agreement with Glendale satisfactory in form and substance to Glendale, and all conditions to the performance by Glendale of its obligations as stated therein shall have been satisfied by FSLIC or FHLBB.

4.3 *Representations and Warranties.*

The representations and warranties of Glendale and the Association set forth in Articles II and III respectively hereof shall, except as contemplated or permitted by this Merger Agreement, be true in all material respects on and as of the Effective Date with the same effect as if made on such date.

Federal Home Loan Bank Board

1700 G Street, N.E.
Washington, D.C. 20552

Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

November 16, 1981

Richard Fink, Esq.
McKenna & Fitting
3435 Wilshire Boulevard
Suite 2800
Los Angeles, California 90010

Dear Mr. Fink

I enclose are draft documents concerning your requests for supervisory forbearance in connection with the proposed merger of First Federal Savings and Loan Association of Broward County, Fort Lauderdale, Florida, into Glendale Federal Savings and Loan Association. The documents include the following:

1. Draft forbearance letter to be signed by the Director of OES. This letter covers items one through four of your requests listed in Exhibit B, with the exception of the request for forbearance for failure to meet liquidity requirements. OES felt that Glendale's problems resulting from the merger in meeting liquidity requirements could best be handled on a case by case basis by the Principal Supervisory Agent pursuant to 12 C.F.R. § 523.12(c).

2. Draft letter concerning branch and merger applications to be signed by the Director of OID. This letter is in response to item five of Exhibit B.

3. Letter of November 13, 1981, concerning the filing of the Form AR, signed by D. James Croft, Director of OES. This letter was sent in response to item 8 of Exhibit B.

4. With respect to item six, the request for approval of the use of purchase accounting, the following information, in addition to that contained in the November 10, 1981, letter from Peat, Marwick, Mitchell & Company, is needed for the request to be properly evaluated:

   (a) The amount of the goodwill in dollars and how that amount was derived.

   (b) The amount of the discount (difference between the fair market value of assets and the fair market value of liabilities) in dollars and how it was derived.

   (c) For both goodwill and the discount, the resulting amortization periods and methods.

   (d) The justification under GAAP for the use of the purchase method of accounting.

5. Item seven of Exhibit B is covered by § 11 of the Supervisory Action Agreement which should read:

   11. *Supervisory Restrictions.* Supervisory restrictions imposed by the FSLIC or the FHLBB specifically upon the Association as a corporate entity shall not be imposed upon Glendale, as the Resulting Association and successor to the Association.

Please send the information requested on your purchase accounting request as soon as possible and let me know what you think of the other documents.

Very truly yours,

/s/
Lawrence W. Hayes
Associate General Counsel

GLENDALE FEDERAL SAVINGS

November 17, 1981

Mr. Lawrence R. Hayes
Assistant General Counsel
Federal Home Loan Bank Board
1700 C Street, N.W.
Washington, D.C. 20552

Dear Mr. Hayes

This letter is in response to your letter of November 16, 1981 requesting additional data concerning accounting treatment of the proposed Glendale Federal Savings merger with First Federal of Broward County.

(a) Amount of goodwill and derivation:

The amount of goodwill and discount will be based upon market rates at the date of closing. A preliminary computation based upon market values at August 31, 1981 resulted in the following:

(1) Amount of goodwill: $515,000,000

(2) Derivation: See Exhibit A

(b) Amount of discount of assets and derivation:

(1) Investment securities were priced at market resulting in a discount of $63,000,000.

(2) Loans were discounted to yield 18% with a balloon payment at the end of twelve years (pass-through pricing) resulting in a discount of $791,000,000.

(3) Savings and FHLB advances were adjusted to current market after adjusting maturities on small savers certificates for prepayment experience resulting in a total discount of $35,000,000.

(c) Amortization periods and methods for goodwill and discount of assets:

(1) Approximately $19,000,000 of the goodwill will be amortized over a 12-year period. The balance will be amortized over 40 years.

(2) The discount on investments will be amortized over the life of the applicable securities.

(3) The discount on the loans will be amortized on the level yield method over the life of the loans (approximately 23 years).

(d) Justification for purchase method of accounting:

The purchase method of accounting is the proper one since Glendale Federal is clearly the dominant and continuing entity and will have effective control over the assets and operations of Broward.

Very truly yours,

/s/

/ljs
Attachment

FIRST FEDERAL OF BROWARD
COMPUTATION OF GOODWILL

Investments	$ 63[1]
Loans	791[2]
Savings	(14)[3]
FHLB Advances	(25)[3]
Fixed Assets	(10)[4]
Service Corporation	(10)[4]
Total	$ 795
Tax effect @ 30%	(238)
Net Worth (12/31/81)	(42)
Total Goodwill	$ 515

[1] Current market value of portfolio.

[2] 23 year life with balloon at end of 12 years.

[3] Adjusted to current rates modified for prepayment assumptions.

[4] Current appraised values.

11/18/81

First FS&LA of Broward County

Financial Information Presentation

Liquidation

Liquidation Assumptions

1. Insured Savings	$1,775,850,000
2. Uninsured Savings	113,503,000
3. Number of Insured Accounts	629,088
4. Per Account Insurance Payment Cost	25
5. Receivership Life	1 year
6. FSLIC Opportunity Cost	15.0%
7. Assets as of 9-30-81	2,643,390,000
8. Net Worth as of 9-30-81	56,762,000

Cost of Liquidation	*$ Actual*	*$ PV Discount*
Payout of Insured Savers	(1,775,850,000)	(1,775,850,000)
Insurance Payment Cost	(15,727,000)	(15,727,000)
Total Cash Outflows	(1,791,577,000)	(1,791,577,000)
Recovery from Receivership	1,158,930,000	1,007,770,000
Total Gain (Loss) to FSLIC	$ (632,647,000)	$ (783,807,000)
Uninsured Savings Balance	$39,430,000	

SUPERVISORY ACTION AGREEMENT

This Supervisory Action Agreement, dated November 19, 1981, between the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, a corporate instrumentality and agency of the United States Government (hereinafter the "FSLIC"), and *GLENDALE FEDERAL SAVINGS AND LOAN ASSOCIATION*, a savings and loan association organized in mutual form under the laws of the United States of America located in Glendale, California (hereinafter "Glendale").

RECITALS

A. Glendale is a Federal savings and loan association with its principal office in the State of California, the accounts of which are insured by the FSLIC in accordance with § 403 of the National Housing Act, as amended (hereinafter the "Act").

B. FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF BROWARD COUNTY (the "Association") is a Federal savings and loan association organized in mutual form under the laws of the United States of America with its principal office in Fort Lauderdale, Florida, the accounts of which are insured by the FSLIC in accordance with § 403 of the Act.

C. The Association has incurred significant losses and its financial condition is such that remedial action must be taken.

D. The FSLIC has decided, pursuant to § 406(f) of the Act, to provide assistance as set forth in this Agreement, having determined that the Association is in danger of default and that the nature and/or

amount of such assistance would be less than the losses FSLIC would sustain upon the liquidation of the Association through a receivership accompanied by the payment of insurance of accounts.

E. Glendale proposes to enter into an agreement of merger with the Association (hereinafter the "Agreement of Merger") pursuant to which the Association will be merged into Glendale in a tax free reorganization pursuant to Section 368(a)(1)(G) of the Internal Revenue Code of 1954, as amended, with Glendale as the surviving association with its home office located in Glendale, California.

NOW, THEREFORE, the parties agree as follows:

1. *Definitions.*

(a) The term "*Effective Date*" means the day and time on which the merger of the Association into Glendale becomes effective pursuant to the terms of the Agreement of Merger and applicable law.

(b) The term "*FHLBB*" means the Federal Home Loan Bank Board or any successor thereto.

(c) The term "*Insurance Regulations*" means the Rules and Regulations of the Federal Savings and Loan Insurance Corporation, 12 C.F.R. §§ 561-571 (1981).

(d) The term "*Federal Regulations*" means the Rules and Regulations for the Federal Savings and Loan System, 12 C.F.R. §§ 541-556 (1981).

(e) The term "*Unknown Liability*" means any loss, liability, claim, demand, cause of action or judgment against the Association, or Glendale as its successor, or against both the Association and Glendale as its successor, to the extent that any such loss, liability, claim, demand, cause of action or judgment (i) is not reserved for or provision made for its payment on the financial statements of the

Association delivered to Glendale pursuant to the Agreement of Merger, or (ii) is not specifically disclosed in a schedule or exhibit to the Agreement of Merger, or (iii) is attributable to or results from any inaccurate representations of the Association set forth in the Agreement of Merger, *provided*, that such financial statements and schedules or exhibits are supplied to the FSLIC. For the purposes of this definition, "Unknown Liability" includes, but is not limited to, claims based upon the failure of the Association to fund pension and retirement payment obligations of the Association.

2. *Conditions to Obligations of Glendale.* The obligations of Glendale under this Agreement are subject to satisfaction of the following conditions:

(a) The FHLBB shall have approved the amendments to the bylaws of Glendale in the form set forth in Exhibit A hereto.

(b) The merger of the Association into Glendale shall have become effective.

(c) A supervisory forbearance letter in the form set forth in Exhibit B shall have been issued.

(d) A letter on the processing of branch applications in the form set forth in Exhibit C shall have been issued.

(e) A letter making the certification as to the Association specified in Section 368(a)(1)(G) of the Internal Revenue Code of 1954, as amended, in the form set forth in Exhibit D shall have been issued.

3. *Conditions to Obligations of Glendale and FSLIC.* The obligations of the FSLIC and Glendale under this Agreement with respect to the Association are subject to the merger of the Association into Glendale becoming effective, and to the satisfaction of the following conditions:

(a) All court actions, regulatory and agency actions, approvals and consents, and all corporate actions, approvals and consents (including resolutions of directors) necessary to accomplish the merger of the Association and Glendale shall have been obtained or accomplished.

(b) All corporate and other proceedings taken in connection with the transactions contemplated hereby shall be satisfactory in form and substance to Glendale and its counsel and to the FSLIC and its counsel, and Glendale and its counsel shall have received such counterpart originals or certified or other copies of such documents as they may reasonably request.

(c) The FSLIC's obligations hereunder as to the Association are also conditioned upon receipt of the following:

(i) An opinion of counsel for Glendale, in form and substance satisfactory to the FSLIC and its counsel, to the effect that:

(A) The merger of the Association into Glendale has been duly authorized by the directors of Glendale and has been effected in compliance with applicable law; and

(B) This Agreement has been duly executed, and delivered, and constitutes a valid and binding obligation of Glendale.

In rendering the opinion, counsel may rely upon certificates of public officials and of responsible officers of Glendale with regard to factual matters.

(ii) A certified copy of the corporate resolutions of Glendale authorizing the execution and delivery of this Agreement and the Agreement of Merger with the Association.

(iii) A certified copy of the corporate resolutions of the Association authorizing the execution and delivery of the Agreement of Merger with Glendale.

4. *Representations.* Glendale hereby represents and warrants to the FSLIC that this Agreement and the Agreement of Merger have each been duly authorized and each has been or will be duly executed by Glendale. The FSLIC represents and warrants that this Agreement has been duly authorized and executed by it.

5. *Rate Protection.* FSLIC and Glendale agree that the future financial condition of Glendale as merged with the Association could be adversely affected by changes in interest rates and that any such adverse effect would be substantially increased as a result of such merger. In order to minimize such risk to Glendale, and at the same time minimize the cost to FSLIC should future interest rates not endanger Glendale's financial condition, the parties agree that FSLIC will make payments to Glendale or Glendale will make payments to FSLIC based upon the following:

(a) For the purposes of this section the following terms have the following meanings:

(i) *Annual Interest Rate Index* means a rate determined as follows: the average of the coupon equivalent yields (rounded to the nearest .001%) of the 90-day, six-month and two-year maturities of U.S. Treasury bills and notes shall be determined each week from figures reported by the Wall Street Journal with respect to the market closing each Friday (or if a holiday, the previous business day) of each Annual Period; and the sum of the averages shall be divided by the number of Fridays in such Annual period.

(i) *Initial Interest Rate Index* means the average of the coupon equivalent yields of the U.S. government securities specified in the definition of Annual Interest Rate Index determined at the

market closing on the first Friday following the Effective Date.

(iii) *Rate Protection Base* means the following dollar amounts at the following Anniversary Dates:

Anniversary Date	*Rate Protection Base*
1	$1.2 Billion
2	1.2 Billion
3	1.0 Billion
4	800 Million
5	500 Million
6-10	0

(iv) *Anniversary Date* means the date one year after the Effective Date and the same day of each succeeding year.

(v) *Annual Period* means each one year period prior to an Anniversary Date.

(b) The amounts to be paid hereunder, if any, shall be paid within 30 days following each Anniversary Date with respect to the preceding Annual Period and shall be an amount equal to the Rate Protection Base as of such Anniversary Date multiplied by the decimal fraction determined as follows:

(i) Such fraction shall be the difference between the Initial Interest Rate Index and the Annual Interest Rate Index for the prior Annual Period adjusted as provided in (ii) below.

(ii) No payment shall be made for any Annual Period if such difference is 1.00 percent or less. If such difference is in excess of 1.00 percent for any Annual Period, such fraction shall be such difference less 1.00 percent, provided that such fraction after reduction by such 1.00 percent shall not exceed 2.00 percent for any Annual Period.

Such amount shall be paid by FSLIC to Glendale if the Annual Interest Rate Index is greater than the Initial Interest Rate Index and shall be paid by Glendale to FSLIC if the Initial Interest Rate Index is greater than the Annual Interest Rate Index, as computed above.

(c) Notwithstanding (b) above, however,

(i) The amounts due FSLIC shall be reduced in the aggregate by $20 million and no amounts hereunder shall be payable by Glendale except accumulated amounts due to FSLIC pursuant to paragraph (b) that exceed such $20 million.

(ii) Glendale may request a deferral of payment for any Annual Period if the consolidated net worth of Glendale as of the end of the month immediately preceding the Anniversary Date following such Annual Period is less than 2.5% of Glendale's total consolidated assets, all computed in accordance with generally accepted accounting principles; and the FSLIC shall not unreasonably refuse such request, *provided* that interest shall accumulate on any deferred payment at a rate equal to the six month Treasury bill rate in effect as of the relevant Anniversary Date.

All tax benefits, if any, inuring to Glendale as a result of the merger of the Association with and into Glendale, or as a result of payments hereunder, or as a result of any other provision of this Agreement, shall inure to the benefit of Glendale and shall not reduce amounts otherwise payable by FSLIC to Glendale hereunder.

6. *Indemnification.* The FSLIC agrees to indemnify and hold harmless Glendale for:

(a) damages arising out of litigation brought against Glendale in the name of the Association,

or by former directors, officers or depositors of the Association, or based upon any action taken by the FHLBB or the FSLIC or a conservator or a receiver appointed by the FHLBB to effect the merger or the transactions contemplated by this Agreement; and

(b) all amounts paid by Glendale in satisfaction, settlement, or compromise of any Unknown Liability, net of any amounts paid to Glendale to offset an amount paid by Glendale pursuant to a related claim of the Association or Glendale as its successor, if such offset or related claim is not reflected on the books of the Association,

including all reasonable costs and attorneys' fees incident to the defense thereof, whether now pending or hereafter claimed or arising; *provided*, however, that before entering into any binding commitment with respect to any litigation referred to in clause (a) of this Section or any Unknown Liability, or making any payment in connection therewith, Glendale must observe covenants set forth in this Agreement relating to the handling of claims, demands, causes of action, lawsuits or judgments.

7. *Covenants by Glendale.* Glendale agrees that during the term of this Agreement:

(a) Glendale will keep such books and records as FSLIC shall reasonably require and/or need to identify and verify the calculations required by this Agreement.

(b) Glendale will exercise its best efforts to administer and deal with Unknown Liabilities in the best interest of both Glendale and the FSLIC and will make every effort to minimize losses.

(c) With respect to all claims, demands, causes of action, lawsuits, or judgments with respect to which

the FSLIC agrees to indemnify and hold harmless Glendale pursuant to Paragraph 6 above, Glendale shall:

(i) Keep the FSLIC informed of the status of such matters;

(ii) Observe the rights of the FSLIC to monitor and direct the defense of such matters, including the right to direct Glendale to appeal any determination of any court, *provided* that the cost of monitoring and directing the defense or prosecution shall be borne by the FSLIC;

(iii) Authorize the FSLIC, upon the FSLIC's election and at the FSLIC's expense with its own attorneys, to defend in the name of Glendale, the Association, or the FSLIC, as the case may be, any such claim, demand, cause of action, or lawsuit and cooperate fully with the FSLIC in the defense or prosecution of any such action including, but not limited to, the furnishing to the FSLIC of all books and records applicable thereto in the possession of Glendale or any affiliate thereof;

(iv) At the request of the FSLIC, assign to the FSLIC and subrogate the FSLIC to any right, title, or interest of Glendale in such claims, demands, causes of action, lawsuits, judgments or defenses thereto; and

(v) Obtain the written consent of the FSLIC before entering into any binding commitment with respect to the satisfaction, settlement, or compromise of any claim, demand, cause of action, or judgment resulting in a payment in excess of $50,000 or before making any such payment in connection therewith, unless such payment is made pursuant to an adjudication by a court of competent jurisdiction which, with the permission of the FSLIC, Glendale has not appealed.

8. *Agreement to Provide Advances.*

(a) The FSLIC shall arrange for the benefit of Glendale or itself make available to Glendale:

(i) Within 90 days after the Effective Date of the merger of Glendale with the Association, to the extent requested by Glendale, the extension, restructuring or refinancing of the entire aggregate principal amount of the balances outstanding as of the Effective Date of the merger under all promissory notes evidencing advances made by the Federal Home Loan Bank of Atlanta ("the FHLB of Atlanta") to the Association ("Outstanding Bank Advances"). The extension, refinancing or restructuring of the Outstanding Bank Advances may be made by the FHLB of Atlanta, by the Federal Home Loan Bank of San Francisco (the "FHLB of San Francisco") or by the FSLIC and shall be in conformity with any credit program then offered to creditworthy members by the FHLB of Atlanta or the FHLB of San Francisco, as the case may be. In lieu of requesting any such extension, refinancing or restructuring, Glendale shall have the right to (a) prepay without prepayment charge or penalty all or any part of the Outstanding Bank Advances, or (b) assume any part of the Outstanding Bank Advances not prepaid, extended, restructured or refinanced, in accordance with the existing terms and conditions thereof. If the FHLB of Atlanta shall impose upon Glendale any prepayment charge or penalty as a result of prepaying all or any part of the Outstanding Bank Advances, or if the FHLB of Atlanta shall refuse to permit Glendale to assume any part of the Outstanding Bank Advances, then, the FSLIC shall reimburse Glendale for any such charge or penalty or shall make available to Glendale an advance on terms and conditions comparable to the Outstanding Bank Advances not

assumed. Following the 90 day period, Glendale shall not prepay any advance of FHLB of Atlanta and replace such advance with an advance from the FHLB of San Francisco bearing a lower rate of interest than the advance repaid.

(ii) Advances shall be made to Glendale in accordance with the terms of all pending and outstanding commitments to make advances to the Association made by the FHLB of Atlanta. After the Effective Date of the merger and in response to Glendale's further requests for advances, advances shall be made on the same terms as are available to other borrowers of a Federal Home Loan Bank, fairly and impartially and without discrimination (including, *inter alia* no adverse underwriting or credit treatment by virtue of Glendale operating in more than one bank district) in favor of or against any member of the respective Bank, to the extent that such advances may safely and reasonably be made, with due regard for the claims and demands of other institutions and with due regard to the maintenance of adequate credit standing for the Banks and their obligations. It is understood that, for purposes of this paragraph, during the term of this Agreement Glendale shall not be discriminated against in the making of advances because of any adverse effect of the assets and liabilities acquired by Glendale from the Association.

(b) So long as advances from the FHLB of Atlanta are outstanding, Glendale shall buy or maintain the stock of the FHLB of Atlanta, or shall maintain a deposit with such Bank in an amount equal to the stock requirements which would be required by such Bank for borrowings by other savings and loan associations for the amount of such outstanding advances. The stock or deposit requirement imposed

upon Glendale by the previous sentence may be met by the acquisition by Glendale of stock of, or a deposit in, the FHLB of San Francisco in the amount required by the previous sentence and by the maintenance of a corresponding deposit in the FHLB of Atlanta by the FHLB of San Francisco. Any such deposit required of Glendale shall bear interest at a rate not less than the dividend rate paid by such Bank on its stock. In addition, Glendale shall also provide the FHLB of Atlanta adequate collateral for such advances, and shall continue to provide the FHLB of San Francisco adequate collateral for advances the FHLB of San Francisco provides pursuant to the conditions and terms of that Bank. Collateral provided to the FHLB of Atlanta for any advance made directly by that Bank or made indirectly through any other Bank and purchased by the FHLB of Atlanta shall be properly earmarked, segregated, perfected, or recorded consistent with the customary requirements of that Bank applicable to all member and non-member borrowers of the Bank.

9. *Termination.* This Agreement shall terminate and the obligations of the FSLIC to make any payments hereunder shall cease upon the expiration of 10 years from the Effective Date, provided, however, that this Agreement and all obligations of the FSLIC hereunder shall terminate effective upon the appointment of a receiver or other official for the purpose of liquidating Glendale or upon termination of the status of Glendale, or a successor institution, as an institution the accounts of which are insured by the FSLIC or a successor thereof.

10. *Miscellaneous Provisions.*

(a) This Agreement, together with an interpretation thereof or understanding agreed to in writing by

the parties, constitutes the entire agreement between the parties thereto and supersedes all prior agreements and understandings of the parties in connection herewith, excepting only the Agreement of Merger and any resolutions or letters issued contemporaneously herewith by the FHLBB or the FSLIC, *provided*, however, that in the event of any conflict, variance, or inconsistency between this Agreement and the Agreement of Merger, the provisions of this Agreement shall govern and be binding on all parties insofar as the rights, privileges, duties, obligations, and liabilities of the FSLIC are concerned. No modification of this Agreement shall be binding unless executed in writing by the parties hereto or their successors. Section headings are not to be considered part of this Agreement, are solely for convenience of reference, and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

(b) The rights, powers, and remedies given to the parties by this Agreement shall be in addition to all rights, powers, and remedies given by any applicable statute or rule of law. Any failure or delay by any party hereto in exercising or partially exercising any right, power, or remedy, shall not preclude the further exercise thereof.

(c) This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, transferees and assigns; *provided*, however, that no rights inuring to the benefit of the Association or its successors may be assigned without the consent of the FSLIC except the assignments by operation of law to Glendale pursuant to the merger contemplated hereby. Any other purported assignment shall be void, shall terminate all obligations of the FSLIC hereunder, and shall obligate the assignor

to repay to the FSLIC all contributions theretofore made.

(d) No subsequent modification or termination of this Agreement shall be binding unless set forth in writing and executed by all the parties or their proper successors.

(e) Nothing expressed or referred to herein is intended or shall be construed to give any person other than the FSLIC, or Glendale, any legal or equitable right, remedy, or claim under or in respect to this Agreement, or any provisions herein contained, it being the intention of the parties hereto that this Agreement and all conditions and provisions hereof are for the sole benefit of the FSLIC and Glendale, and for the benefit of no other person.

11. *Supervisory Restrictions.* Supervisory restrictions imposed by the FSLIC or the FHLBB specifically upon the Association as a corporate entity shall not be imposed upon Glendale, as the Resulting Association and successor to the Association.

12. *Governing Law.* This Agreement and the rights and obligations of the parties hereunder shall be governed by the law of the State of California to the extent that Federal law does not control. Nothing in this Agreement shall require any unlawful action or inaction by either of the parties hereto.

13. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall constitute one of the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.

14. *Notices.*

(a) Any notice or other communication required or permitted hereunder, unless otherwise specifically

provided for, shall be deemed to be given if sent by first class mail, postage prepaid, to such party at its address set forth below or at such other address as such party shall hereafter furnish in writing.

GLENDALE FEDERAL SAVINGS AND LOAN ASSOCIATION
Attention: President
401 North Brand Boulevard
Glendale, California 91209

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
Attention: Chief, Financial Assistance Division
1700 G Street, N.W.
Washington, D.C. 20552

(b) Unless otherwise specifically provided for, if this Agreement requires that notice be given within a certain period of time, notice shall be deemed given when deposited with the U.S. Postal Service, or if personally delivered, at the time of receipt.

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto by their officers duly authorized on the date first above written.

GLENDALE FEDERAL SAVINGS AND LOAN ASSOCIATION

By _____ By _____
Secretary Chairman of the Board

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

By _____ By _____
Secretary Director

Federal Home Loan Bank Board

November 19, 1981

President
Glendale Federal Savings
and Loan Association
401 North Brand Boulevard
Glendale, California 91203

Dear Sir:

This letter is issued in connection with the approval by the Federal Home Loan Bank Board ("Board") of the supervisory merger of First Federal Savings and Loan Association of Broward County, Fort Lauderdale, Florida ("Broward") into Glendale Federal Savings and Loan Association, Glendale, California ("Glendale"). In its approval of that merger the Board has determined to exercise supervisory forbearance with respect to certain of the Board's regulatory requirements applicable to Glendale following the merger. In approving the issuance of this letter, the Board has also authorized the Director, Office of Examinations and Supervision ("OES") to exercise that forbearance in such manner as, in his discretion, he deems appropriate. In that regard, in determining whether to take supervisory action, OES will proceed as follows:

1. Following the merger, OES will forbear from exercising its authority under § 563.13(d) and § 563.14(b) of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation because of the failure of Glendale to comply with the statutory reserve and net worth requirements of § 563.13 to the extent that such failure results from

(a) scheduled items attributable to assets of Broward existing at the effective date of the merger, or (b) any reduction in net worth resulting from losses on assets acquired in connection with the merger ("losses of Broward").

2. Following the effective date of the merger, for purposes of compliance with any section of the Rules and Regulations for Insurance of Accounts and the Rules and Regulations for the Federal Savings and Loan System: (a) scheduled items attributable to Broward shall be excluded from the computation of ratios of scheduled items to specified assets in determining whether Glendale meets the requirements of those regulatory provisions referring to such ratios and (b) where reference is made to "net worth," losses of Broward shall be excluded from the net worth of Glendale in determining whether it meets the requirements of those sections.

3. Glendale will not be deemed in noncompliance with the provisions of § 545.9-1 of the Rules and Regulations for the Federal Savings and Loan System solely because activities of any service corporation acquired by a subsidiary of Glendale in connection with the merger are not approved under that section, *provided* those activities could be approved under the Home Owners' Loan Act of 1933 as authorized investments.

4. In determining Glendale's compliance with § 545.9-1(d) of the Rules and Regulations for the Federal Savings and Loan System, the value of any service corporation of Broward acquired by a subsidiary of Glendale in connection with the merger shall not be deemed an investment by Glendale in that subsidiary.

5. For a period of one year following effective date of merger, in determining whether penalty shall be

assessed against or paid by Glendale pursuant to § 523.13 of the Rules and Regulations for Federal Home Loan Bank System, the liquidity requirements of § 523.11 as applied to Glendale shall be reduced by (a) the amount of Broward's liquidity deficiencies existing at the effective date of the merger, and (b) any aggregate net withdrawals (excess of withdrawable over cash savings received) from the Broward division of Glendale after effective date of merger.

By the Federal Home Loan Bank Board

J.J. Finn
Secretary

Federal Home Loan Bank Board

No. 81-710

Date: November 19, 1981

WHEREAS, the boards of directors of First Federal Savings and Loan Association of Broward County, Fort Lauderdale, Florida ("Broward"), and Glendale Federal Savings and Loan Association, Glendale, California ("Glendale"), have adopted an Agreement of Merger (a copy of which is in the Minute Exhibit File) under which Glendale will be the "Resulting Association"; and

WHEREAS, Broward and Glendale have applied to the Federal Home Loan Bank Board ("Bank Board") for approval of said merger, and Glendale has applied to the Federal Savings and Loan Insurance Corporation ("FSLIC") for approval of an increase in its accounts of an insurable type as part of such merger with Broward; and

WHEREAS, the merger of Glendale and Broward is conditioned upon the execution of a Supervisory Action Agreement between Glendale and the FSLIC, under which the FSLIC will agree to provide assistance and to indemnify Glendale for certain losses it may incur as a result of the proposed merger; and

WHEREAS, the proposed merger and execution of a Supervisory Action Agreement ("SAA") with Glendale would be undertaken pursuant to an action by the FSLIC to prevent the failure of Broward; and

WHEREAS, the Bank Board has considered a proposed form of such SAA, pursuant to which

assistance would be provided (a copy of which proposed form of SAA is in the Minute Exhibit file):

NOW THEREFORE, IT IS RESOLVED that the proposed merger of Broward and Glendale and the resulting increase of accounts of an insurable type in Glendale pursuant to the Agreement of Merger are hereby approved pursuant to the provisions of § 546.2 of the Rules and Regulations for the Federal Savings and Loan System ("Federal Regulations") (12 C.F.R. § 546.2 (1981)), and § 563.22 of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation ("Insurance Regulations") (12 C.F.R. § 563.22 (1981)), *provided*, that:

(1) If Glendale elects to average its account balances for the purposes of determining its reserve requirements under § 563.13 of the Insurance Regulations (12 C.F.R. § 563.13 (1981)) at any closing date following the merger, Glendale shall include the appropriate balances of both Glendale and Broward for each closing date used in its calculation;

(2) Not later than sixty days following the effective date of the merger, unless such date is extended by the Principal Supervisory Agent of the Bank Board, San Francisco, California, or an agent of the Bank Board designated by the Principal Supervisory Agent ("Supervisory Agent"), Glendale shall submit evidence to the FSLIC or an agent thereof that Glendale has given notice in writing, in a form approved by the Office of the General Counsel, to each accountholder who had accounts in both Glendale and Broward prior to the merger and the total of

whose withdrawable accounts in the Resulting Association will exceed the sum of $100,000 after the merger, of the effect of the merger on the extent of such accountholder's insurance coverage, *provided*, that any such accountholder is hereby authorized to withdraw without penalty that portion of his accounts in the Resulting Association that is uninsured solely as a result of the merger;

(3) Not later than sixty days following the effective date of the merger, Glendale shall furnish an opinion from its independent accountant, satisfactory to the Supervisory Agent, which (a) indicates the justification under generally accepted accounting principles for use of the purchase method of accounting for its merger with Broward, (b) specifically describes, as of the Effective Date, any goodwill or discount of assets arising from the merger to be recorded on Glendale's books, and (c) substantiates the reasonableness of amounts attributed to goodwill and the discount of assets and the resulting amortization periods and methods; and

(4) Glendale shall submit a stipulation that any goodwill arising from this transaction shall be determined and amortized in accordance with FHLBB Memorandum R-31b; and

RESOLVED FURTHER, that the Bank Board finds that the merger of Glendale and Broward is instituted for supervisory reasons; and

RESOLVED FURTHER, that the Bank Board finds that approval of the merger of Glendale and Broward

is necessary to prevent the probable failure of Broward; and

RESOLVED FURTHER, that the Bank Board, as the operating head of the FSLIC, hereby determines, pursuant to § 406(f) of the National Housing Act, as amended (12 U.S.C. § 1729(f) (Supp. III 1979)), that (1) financial assistance by the FSLIC is necessary to prevent the default of Broward, and (2) the amount of such assistance, to be provided in accordance with the terms and conditions of the proposed SAA by and between Glendale and the FSLIC, would not exceed the amount that would be reasonably necessary to save the cost of liquidating Broward through a receivership accompanied by the payment of insurance on its accounts; and

RESOLVED FURTHER, that the Director, Deputy Director, or Chief, Problem and Rehabilitation Division, Office of the FSLIC ("Director"), or such person as any of them may designate in writing, be and hereby is authorized to execute on behalf of the FSLIC an SAA in the form or substantially in the form of the proposed SAA; and

RESOLVED FURTHER, that the Bank Board finds and hereby certifies that, with respect to Broward, the grounds set forth in 12 U.S.C. § 1464(d)(6)(A)(i) will exist in the near future in the absence of action by the Bank Board; and

RESOLVED FURTHER, that the Secretary or an Assistant Secretary of the Bank Board is hereby authorized and directed to send a letter to Glendale certifying on behalf of the Bank Board that the grounds set forth in 12 U.S.C. § 1464(d)(6)(A)(i) will exist with respect to Broward in the near future in

the absence of Bank Board action, and the Secretary or an Assistant Secretary of the Bank Board is hereby authorized to provide a copy of such certification to any agency of the United States upon request; and

RESOLVED FURTHER, that the Bank Board hereby determines, pursuant to § 556.5(a)(3)(ii)(a) of the Federal Regulations that (1) establishment of former offices of Broward as branch offices of Glendale in Florida as a result of the proposed acquisition will be achieved by a merger pursuant to an action by the FSLIC to prevent the failure of Broward; (2) the insurance liability or risk of the FSLIC will be reduced as a result of the maintenance of such branch offices by Glendale; and (3) no equally desirable acquisition alternative that could be approved in accordance with § 556.5(a)(3)(i) of the Federal Regulations has been submitted with respect to Broward; and

RESOLVED FURTHER, that the maintenance of the offices of Broward, as reflected on the Bank Board's records as of the effective date of the merger, as offices of Glendale subsequent to the merger, is hereby approved; and

RESOLVED FURTHER, that Glendale may designate its offices located in the State of Florida as "First Federal Savings and Loan of Broward County, a division of Glendale Federal Savings and Loan Association"; and

RESOLVED FURTHER, that it is hereby directed that the cessation of the membership of Broward in the Federal Home Loan Bank of Atlanta be noted by reason of the merger hereinbefore approved, effective as of the effective date of the merger; and

RESOLVED FURTHER, that the Secretary or an Assistant Secretary of the Bank Board is hereby directed to cancel Broward's certificate of insurance upon the effective date of the merger; and

RESOLVED FURTHER, that the Secretary or an Assistant Secretary is authorized and directed to send to Glendale a letter concerning scheduled items attributable to Broward and the forbearance of the FSLIC and the Bank Board with respect to certain regulatory requirements (a copy of which letter is in the Minute Exhibit file); and

RESOLVED FURTHER, that amendments to the bylaws of Glendale contained in Exhibit A to the Proposed SAA hereinbefore approved, amending sections four ("Meetings of the board of directors"), fifteen ("Number of directors"), and twenty-two ("Indemnification") are hereby approved; and

RESOLVED FURTHER, that the effective date of the merger of Broward into Glendale shall be 11:59 p.m., EST, November 19, 1981, unless such effective date is altered by the Supervisory Agent.

By the Federal Home Loan Bank Board

J.J. Finn
Secretary

Federal Home Loan Bank Board

No. 81-712

Date: November 19, 1981

WHEREAS, the Director, Deputy Director, or Chief, Problem and Rehabilitation Division, Office of the Federal Savings and Loan Insurance Corporation, or such person as any of them may designate in writing ("Director"), has been authorized to execute on behalf of the Federal Savings and Loan Insurance Corporation ("FSLIC") a Supervisory Action Agreement with Glendale Federal Savings and Loan Association, Glendale, California; and

WHEREAS, said Supervisory Action Agreement imposes certain rights, duties, and obligations upon the FSLIC that do not require basic determinations of policy; and

WHEREAS, in the administration of said Supervisory Action Agreement, and of any rights or obligations acquired by the FSLIC thereunder, it may be necessary or desirable that the FSLIC contract for legal, auditing, and other services:

NOW, THEREFORE, IT IS RESOLVED that the Federal Home Loan Bank Board, as operating head of the FSLIC, has determined that such expenditures of the FSLIC pursuant to said Supervisory Action Agreement shall be incurred, allowed, and paid under the provisions of the fourth sentence of section 402(c)(5) of the National Housing Act, as amended; and

RESOLVED FURTHER, that effective upon the execution of said Supervisory Action Agreement, the

Director is hereby authorized and directed to take such actions as may be desirable or necessary to fulfill the rights, duties, and obligations of the FSLIC under said Supervisory Action Agreement, and to incur, allow, and pay all expenditures in fulfillment of such rights, duties, and obligations, pursuant to the fourth sentence of section 402(c)(5) of the National Housing Act, as amended, including, but not limited to:

1. The payment of amounts required by said Supervisory Action Agreement;
2. Contracting for legal, auditing, or other services; and
3. The pursuit of claims.

By the Federal Home Loan Bank Board

J.J. Finn
Secretary

TRANSCRIPT OF CLIENT-FURNISHED TAPES
November 19, 1981

ANN RILEY & ASSOCIATES, LTD.
72 K Street NW, Suite 300
Washington, D.C.
(202) 293-3950

The following are excerpts from a transcript prepared by the government of a tape recording of a meeting of the Federal Home Loan Bank Board held November 19, 1981. Bracketed page numbers are to the Court of Appeals Appendix:

[1637]

FINN: This is a First Federal Savings and Loan—on FSLIC assisted acquisition by Glendale Federal Savings and Loan of Glendale, California.

* * *

BEESLEY: Mr. Chairman, Board Member DiPrete, you have before you a proposal to merge Broward—First Federal Savings and Loan of Broward County into Glendale Federal Savings and Loan of Glendale, California.

The merger is a negotiated merger between the parties and involves an assistance package of the FSLIC that has never been used, to our knowledge, before.

By way of background, the FSLIC has attempted to strike a merger of this Association, which is a Category 1 problem Association, with the viable Associations existing presently in the State of Florida. They have been contacted and asked if they would be interested in taking this Association, and the answer was negative.

I might say that even the two largest remaining Associations in Florida, if they were to have agreed to

accept Broward on the same terms as has been proposed by Glendale, there would be a serious question as to their viability in the future.
[1638]

Nevertheless, both Associations, AmeriFirst and Florida Federal, have indicated that they would not be interested in this Association on these terms.

The major elements of this proposal involve the use of purchase accounting and an FSLIC guarantee.

* * *

[1639]

* * *

[BEESLEY:] May I make the point to the Board that I was present during some of the discussions between AmeriFirst and Florida Federal with Mr. Connell, and the proposal, as about to be presented to the Board, involving Glendale itself, was presented to them, and they were not interested on those terms, either.

Back to the major elements of the agreement, the use of purchase accounting, with regard to this question, the transaction has been reviewed by Peat, Marwick & Mitchell, Glendale's accounting firm, and they have stated, in a letter dated November 10th, that, in their opinion, the accounting of the acquisition of Broward by Glendale, as described in proposed accounting procedures, is in accordance with generally-accepted accounting principles, and there is a detailed analysis of their conclusions on page 4 of the presentation to the Board.

* * *

[1643]

* * *

[BEESLEY:] I might say, at the outset, in my judgment, I don't think we'll ever see a deal like this one again in terms of its benefit to the FSLIC, and I'd like to turn now to that point.

On the top of page 6, the estimated present value cost to the FSLIC for a liquidation of Broward would be $780 million with an initial cash outlay of $1.8 billion.

Based on the historical cost of dealing with problems using, say, a 30-percent cost of liquidation, we would be looking at approximately a quarter of a billion dollars in assistance if this were solved along the lines of the more traditional means.

This merger, in a worst-case scenario, is going to cost us about $66 million, and in a favorable scenario, we would make about $40 million.
[1644]

* * *

* * * It's an incredible opportunity for the FSLIC and the Bank Board to show how a large problem can be resolved with minimal expense and should build a great deal of confidence in the industry.

* * *

I have seen the spreadsheets over a 20-year period, as prepared by Kaplan & Smith and Peat Marwick, and based on the interest rates at the time, which have improved some since the date those presentations were made, they were, indeed, viable after this merger, and the insurance protection that has been negotiated should protect them from an adverse change in interest rates.

* * *

[1648]

* * *

PRATT: I understand that purchase accounting will be used in this transaction, and in view of the Board's recent discussion of supporting purchase accounting and yet indicating that it should be used in appropriate circumstances, I take it you feel that this merger meets those conditions.

CROFT: Yes, it does.

OES recommends that the Board approve this merger and the use of purchase accounting in the transaction. In our opinion and the opinion of the Chief Accountant's section, this application represents an appropriate use of this technique, and there is nothing in the application that causes us any problems or hesitation whatsoever.

* * *

[1650]

* * *

DIPRETE: Mr. Chairman, do you have any opinion on whether the proposal to amortize the remaining good will, over and about $19 million, over a period as long as 40 years—and I realize that 40 years is considered by accountants to be the maximum period of amortization, but do you have an opinion, yourself, as to whether that figure will be appropriate in every case?

CROFT: My accounting staff indicates that it is probably not appropriate in every case. In this case, they feel that this definitely complies with GAAP, and they would have no objections to this.

* * *

[1651]

BEGIN TAPE 2, SIDE A:

DIPRETE: I take it from your early review that you did make an effort to exhaust the possibility of a

Florida intrastate solution to this problem, and finding none, then undertook an evaluation of Glendale, independent?

BEESLEY: That is correct. And then, upon reaching the agreement with Glendale, Mr. DiPrete, we went back once again, in an abundance of caution, to the two Florida associations, that, in the opinion of supervision, could possibly handle this problem, and disclosed the terms and conditions of the Glendale agreement asked them if, under those terms and conditions, they could possibly have any interest. And we received a positive, we received an actual response in each case saying that they would not.

[1656]

* * *

* * *

[PRATT:] *** Further, that the solution which FSLIC has found is one which appears to save the people of the United States, through a savings to the FSLIC, very substantial sums of money, approximating three quarters of a billion dollars, and that a transaction of this type, therefore, represents the accomplishment of the highest public duty by staff. And I believe that that is important to be noted on the record.

* * *

GLENDALE FEDERAL SAVINGS

March 19, 1982

Milton Feinerman, President
Federal Home Loan Bank of San Francisco
600 California Street
P.O. Box 7948
San Francisco, California 94120

Dear Doctor Feinerman:

In accordance with Federal Home Loan Bank Board Resolution 81-710, date November 19, 1981, which approved the merger of Glendale Federal Savings and Loan Association and First Federal Savings and Loan Association of Broward County, enclosed is an opinion from our independent accountants, Peat, Marwick, Mitchell & Co., with respect to the purchase method of accounting used by Glendale Federal Savings in connection with the merger.

We will be happy to answer any questions you may have concerning the attached material.

Very truly yours,

/s/ David T. Hansen

/ljs
Enclosure

cc: Anthony J. Starinieri
FSLIC

Certified Public Accountants
Peat, Marwick, Mitchell & Co.
555 South Flower Street
Los Angeles, California 90071
(213) 972-4000

The Board of Directors
Glendale Federal Savings and Loan Association

Gentlemen:

We have reviewed the accounting and methodology for the acquisition of First Federal Savings and Loan Association of Broward County (Broward) by Glendale Federal Savings and Loan Association (GFS) as set forth in the accompanying unaudited "Statement of Assets Acquired and Liabilities Assumed of First Federal Savings and Loan Association of Broward County" at November 20, 1981 (Statement).

Management of GFS has recorded the acquisition of Broward as a purchase transaction under generally accepted accounting principles (Accounting Principles Board Opinion No. 16) and accordingly the assets and liabilities have been recorded at fair value. The excess of fair value of liabilities over the fair value of assets has been recorded as goodwill, aggregating $734,666,000 at November 20, 1981, and will be amortized in accordance with Accounting Principles Board Opinion No. 17 over its estimated useful life as described in the note to the Statement. The amount of discount relating to loans receivable as of the acquisition date is $796,418,000 and will be amortized using a level yield interest method over the remaining contractual life of the loan portfolio adjusted for estimated prepayments. Such method results in the recognition of interest income in future periods to

approximately a constant rate of return on the loans. All other discounts and/or premiums resulting from the valuation to fair value of interest bearing assets and liabilities has been amortized using a level yield interest method over the estimated lives of the respective assets or liabilities.

In our opinion, the accounting for the acquisition of Broward by GFS as a purchase transaction is in accordance with generally accepted accounting principles. Additionally, we [illegible] the methodology to compute goodwill, loan discount and other discounts and/or premiums and the related methods and periods for their amortization as described in the note to the Statement and are of the opinion that such methodology is in accordance with generally accepted accounting principles.

Very truly yours,

/s/ Peat, Marwick, Mitchell & Co.

March 15, 1982

STATEMENT OF ASSETS ACQUIRED AND LIABILITIES ASSUMED OF FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF BROWARD COUNTY NOVEMBER 20, 1981

Note
(Unaudited)

	Book Balance November 20, 1981	*Purchase Adjustments*	*Fair Value November 20, 1981*
	(Amounts in Thousands)		
Assets:			
Cash	$25,956	$	$25,956
Certificates of deposit, bankers' acceptances and short-term bank obligations	55,358	(334)	55,024
U.S. Government and other securities	96,482	(7,132)	89,350
Loans receivable	2,324,995	(796,418)	1,528,577
Real estate held for sale or development	19,009	(206)	18,803
Interest receivable and other assets	28,673	(797)	27,876
Investment in capital stock of Federal Home Loan Bank	21,196		21,196
Federal Savings and Loan Insurance Corporation secondary reserve	1,193		1,193
Premises and equipment	48,442	7,993	56,435
Goodwill		734,666	732,321
	$2,621,304	$(62,228)	$2,559,076

LIABILITIES:			
Savings accounts	$1,879,845	$(1,767)	$1,878,078
Borrowing from Federal Home Bank	413,220	(7,157)	406,063
Other borrowings	162,930	25	162,955
Other liabilities and accrued expenses	76,807	(311)	76,496
Taxes on income	5,082	(5,082)	
Undisbursed loan funds	35,484		35,484
Deferred income	5,658	(5,658)	
Retained Earnings	42,278	(42,278)	
	$2,623,649	$(62,228)	$2,539,076

See accompanying note.

GLENDALE FEDERAL SAVINGS AND LOAN ASSOCIATION NOTES TO STATEMENT OF ASSETS ACQUIRED AND LIABILITIES ASSUMED OF FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF BROWARD COUNTY

NOVEMBER 20, 1981

(Unaudited)

Note *Accounting for the Acquisition*

The generally accepted accounting principles followed by Glendale Federal Savings and Loan Association (GFS) with respect to the acquisition of First Federal Savings and Loan Association of Broward County (Broward) by GFS are as follows:

Pursuant to the provisions of the Agreement of Merger between GFS and Broward dated November 20, 1981 and the Supervisory Action Agreement between GFS and the Federal Savings and Loan Insurance Corporation (FSLIC) dated November 20, 1981, upon the effective date of November 20, 1981, GFS accounted for the acquisition using the "Purchase Method" of accounting in accordance with Accounting Principles Board Opinion No. 16 (APBO 16). Purchase accounting was appropriate inasmuch as Broward was not autonomous within the meaning of APBO 16 before the combination because Broward had incurred significant losses and its financial condition was such that remedial supervisory action was required. FSLIC acted on behalf of Broward and provided substantial assistance to GFS in the form of interest rate protection and other guarantees. In its business and economic analysis GFS has justified its investment in Broward by the future growth potential in the market areas within the state of Florida

and GFS's ability to reach those markets through use of its marketing methods.

- Assets and liabilities have been recorded at their respective fair values as of the effective date of the acquisition in accordance with Accounting Principles Board Opinion No. 16. The excess of fair value of liabilities over the fair value of assets has been recorded as goodwill.

In accordance with Accounting Principles Board Opinion No. 17, $18,000,000 of the resultant goodwill is associated with the savings deposit base and will be amortized on a straight line basis over 12 years, the estimated life of the savings deposit base. The remaining goodwill of $716,666,000 will be amortized on a straight line basis over 40 years as GFS believes that the remaining goodwill has an indefinite life since it is related to expansion of operations into an entirely new market area.

The loan discount of $796,418,000 will be amortized using a level yield interest method over the remaining contractual life of the loan portfolio adjusted for estimated prepayments. Such method results in the recognition of interest income in future periods to approximate a constant rate of return in the loans.

All other discounts and/or premiums resulting from the valuation to fair value of interest bearing assets and liabilities will be amortized using a level yield interest method over the estimated lives of the respective assets or liabilities.

Office of Thrift Supervision

Thrift Bulletin

Handbook: Thrift Activities — Section: 320
Subject: Capital Adequacy — TB 38-2
January 9, 1990

Capital Adequacy: Guidance on the Status of Capital and Accounting Forbearances and Capital Instruments Held by a Deposit Insurance Fund

Summary: This Bulletin informs all savings associations that have been operating under capital or accounting forbearances that Section 5(t) of the Home Owners' Loan Act ("HOLA") eliminates such forbearances. Accordingly, these forbearances should be eliminated in determining whether or not an association complies with the new capital regulation. All associations that do not comply with the new capital regulation must submit a capital plan. This Bulletin also clarifies the treatment of capital instruments held by a deposit insurance fund.

For further Information Contact: The District Office in which you are located or the Supervision Policy Division of OTS, Washington, D.C.

Thrift Bulletin, 38-2

Introduction

Questions have been raised regarding the status of previously granted forbearances and waivers as well as the treatment of FSLIC-owned warrants and other capital instruments. This Bulletin providing guidance to savings associations on these matters.

Capital Compliance

The Office of Thrift Supervision is applying the new capital standards to all savings associations, including those associations that have been operating under previously granted capital and accounting forbearances. Section 5(t) of HOLA as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) eliminates these forbearances. All savings associations presently operating with these forbearances, therefore, should eliminate them in determining whether or not they comply with the new minimum regulatory capital standards. (Any FSLIC capital contribution that resulted in the creation of goodwill will be subject to the requirements for goodwill established in the capital regulation.)

If the association determines that it will fail its minimum regulatory capital requirements upon the elimination of capital and accounting forbearances, it must submit a capital plan to its District Director in accordance with the regulatory capital regulations and Thrift Bulletin 36.

A capital plan will not be acceptable if it includes the continuation of previously granted capital and accounting forbearances. Capital plans already submitted that propose to continue previous capital and

accounting forbearances will be either disapproved, returned for revision and resubmittal or conditionally approved with the requested forbearance denied.

Capital Instruments Held by a Deposit Insurance Fund

Capital instruments owned by a party with a financial obligation to a savings association will be treated in accordance with Generally Accepted Accounting Principles (GAAP). For example, under 12 CFR 567, for the purpose of the inclusion in capital of instruments owned by the FSLIC or the FDIC, the Office will rely on the presentation standards established under GAAP. FSLIC or FDIC holdings of capital instruments (including, but not limited to, warrants preferred stock and subordinated debentures) will be required to be offset by any receivables (on the asset side of the balance sheet) from FSLIC or the FDIC for the purpose of calculating the amount of such holdings to be included in capital. The amount of the offset is limited to the amount of the FSLIC or FDIC capital instrument.

When there is no offsetting obligation, the value of warrants and other qualifying core capital instuments may be counted as core capital unless the holder of the warrants and other instruments is a federal deposit insurance fund. If the holder of the capital instruments is a federal deposit insurance fund, then they must be classified as supplementary capital.

— Jonathan L. Fiechter
Senior Deputy Director, Supervision Policy

UNITED STATES CLAIMS COURT

No. 90-772 C
(Chief Judge Loren Smith)

GLENDALE FEDERAL BANK, FSB, *Plaintiff,*

v.

UNITED STATES OF AMERICA, *Defendant.*

AFFIDAVIT OF RAYMOND D. EDWARDS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY

I, Raymond D. Edwards, depose and state as follows:

1. I served as Chief Executive Officer of Plaintiff in this action, which is currently known as Glendale Federal Bank, FSB, from 1968 until 1985, and I served as Chairman of the Board of Glendale from 1972 until 1988. During that period, I also served as Chief Executive Officer (1985-87) and Chairman of the Board (1985-90) of Glendale's parent GLENFED, Inc.

2. I was personally and substantially involved, on behalf of Glendale, in negotiating terms of Glendale's November 19, 1981 contract with the Federal Savings and Loan Insurance Corporation ("FSLIC") and the Federal Home Loan Bank Board ("FHLBB"). Indeed, I executed, on Glendale's behalf, both the Supervisory Action Agreement ("SAA") with FSLIC and Glendale's Agreement of Merger with Broward.

3. I submit this affidavit in support of Glendale's motion for summary judgment on the issue of

liability. I am familiar with the matters set forth herein from my own personal knowledge and from a review of documents produced to Glendale by the United States in discovery.

4. Based on my recollection of the negotiations between Glendale and representatives of the FSLIC and FHLBB, on the economic realities of the proposed transaction, and on my understanding of the terms of the contract Glendale entered into with the FSLIC, it was the intent and understanding of both parties to the SAA that the contract required the government to recognize as capital the goodwill Glendale acquired pursuant to purchase method accounting, and to allow all but a small portion of it to be amortized over 40 years.

5. Without the government's agreement concerning the treatment of the goodwill acquired in the Broward merger, Glendale would not have even considered entering into the transaction. The treatment of goodwill as capital and its amortization over 40 years was the most fundamental element of the transaction. Without that element—or some equivalent, such as cash assistance—the merger would have been financially and economically unthinkable for Glendale.

6. Before we agreed to the merger, I was particularly concerned with Glendale's capital position not only for the period immediately after the merger, but in the years thereafter. Because of this concern, I felt that it was critical to obtain the government's agreement not only to the recognition of goodwill as capital, but also to the 40-year amortization period. If the government had not agreed to this 40-year period, we would have had to reevaluate the assumptions on which our feasibility studies were based as to both projected earnings and maintenance of Glendale's net worth. A shorter amortization period, such as 25

years for example, would have adversely affected projected earnings and changed the transaction sufficiently to have required considerable additional assistance from the government to make the acquisition of Broward financially feasible.

7. At all relevant times, we regarded the government as a contracting partner acting in its own economic and commercial best interests. Glendale knew that, unless the government found a suitable merger partner or acquiror for Broward, the government would have had to pay off Broward's depositors upon liquidation of Broward. Because of Broward's large marked-to-market capital deficit at the time of the merger, such a payout would have cost the government's insurance fund nearly three quarters of a billion dollars. Accordingly, when Glendale negotiated and concluded the SAA with the government, Glendale believed the government was entering into a binding contract intended to advance its own commercial purposes: to induce Glendale to merge with Broward and to avoid that imminent deposit insurance liability of approximately $750 million.

8. Although Glendale initially sought a government cash contribution in the neighborhood of $30 million in addition to the government's commitments regarding goodwill and its amortization period, Glendale settled instead for an interest-rate protection provision. Pursuant to that provision, the government agreed to protect Glendale against adverse interest rate changes, provided that Glendale made a similar commitment to the government should interest rates decline, thus benefiting Glendale. The terms of this interest rate protection provision of the SAA were negotiated in the context of the government's other contract commitments to recognize goodwill as capital over a 40-year amortization period. Had the government not agreed to 40-year amortization for the

goodwill, and required a shorter period instead, the merger may not have been feasible for Glendale. Assuming it remained feasible on some terms, however, the altered projected financial benefits and burdens of the transaction—which would result from a shorter amortization period—would have required Glendale to obtain different terms for interest-rate protection or other government assistance.

9. The government's agreement to recognize as capital the goodwill Glendale acquired under purchase accounting was essential not only to Glendale, but to the government as well. Unless the goodwill counted as capital, and could be amortized over a sufficiently long period of time to allow Glendale to overcome the burden of Broward's tangible capital deficit, FSLIC and the FHLBB would not and could not have approved the transaction. To have done so would have transformed a smaller insolvent S&L into a much larger one, because unless the goodwill could offset Broward's negative tangible capital, Glendale would itself have been very seriously insolvent on the day following the transaction and for many years thereafter.

10. It was my understanding at all relevant times, and still is my understanding, that the government committed itself in the SAA to recognize goodwill as capital and to allow it to be amortized over 40 years, and that it did so for its own economic benefit. I would not have permitted Glendale to enter into the merger with Broward had I thought that the SAA did not represent a binding commitment by the government as to those two critical elements of the transaction.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on 8-23-91

By /s/ Raymond D. Edwards
Raymond D. Edwards

UNITED STATES CLAIMS COURT

Civil Action No. 90-772 C
(Chief Judge Loren Smith)

GLENDALE FEDERAL BANK, FSB, *Plaintiff,*

v.

UNITED STATES OF AMERICA, *Defendant.*

AFFIDAVIT OF DAVID T. HANSEN IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY

I, DAVID T. HANSEN, depose and state as follows:

1. Since February of 1991 I have been Executive Vice President and Chief Financial Officer of Downey Savings & Loan Association. From June 1981 to November 1990 I was Chief Financial Officer of Plaintiff in this action, presently known as Glendale Federal Bank, FSB. At various times during that period I also served as a director of Glendale Federal Bank and Chief Financial Officer of Glendale's holding company, GLENFED, Inc. I am a certified public accountant and a member of the American Association of Independent Certified Public Accountants' ("AICPA") Savings & Loan Committee.

2. I submit this affidavit in support of Glendale's motion for summary judgment on the issue of liability. I am familiar with the matters set forth herein from my own personal knowledge and from a

review of documents in Glendale's files as well as those produced by the United States in discovery to Glendale.

3. Based on my recollection of the negotiations between Glendale and representatives of the FHLBB and FSLIC, my analysis of the financial condition of First Federal Savings of Broward County ("Broward"), and my understanding of the terms of the Supervisory Action Agreement ("SAA") entered into between Glendale and the government, I have no doubt that both parties to the SAA—Glendale and the United States—intended and understood that their agreement required the government to recognize the goodwill acquired under purchase method accounting as capital, and to allow all but a small portion of it to be amortized over the agreed period of 40 years. As Chief Financial Officer of Glendale at the time, I would not and could not have allowed the proposed merger if there was any question as to whether the government agreed in the SAA to recognize goodwill as capital and to allow it to be amortized over 40 years.

4. When Glendale first considered a merger with or acquisition of Broward in the late summer of 1981, we knew that Broward was losing money at the rate of 4 to 7 million dollars per month. After examining Broward's financial statements, we also became aware that the marked-to-market value of Broward's assets (principally loans) was less than the marked-to-market value of its liabilities (principally deposits) by hundreds of millions of dollars. The decline in value of Broward's loans was largely a result of the extraordinarily steep climb in prevailing interest rates in that period, combined with Broward's large portfolio of fixed-rate mortgage loans subject to Florida's state-law interest ceilings.

5. Despite Broward's massive "capital hole," Glendale was interested in pursuing an acquisition or merger so long as the FHLBB and FSLIC agreed to fill the capital hole with cash, notes, or an equivalent. I recall meeting with government representatives at least twice in October of 1981. Exhibit 13 to Glendale's motion for summary judgment as to liability is the agenda for an October 14, 1981 meeting. Exhibit 18 to the motion is a letter confirming certain matters discussed at the October 28, 1981 meeting. From the first negotiations with government regulators regarding the merger, it was understood by both sides that the transaction would be feasible if and only if the government dealt with Broward's large tangible capital deficit in some way. It rapidly became clear that the government's preferred means of doing so was by purchase method accounting pursuant to GAAP. Purchase accounting allowed the tangible capital deficit of Broward to be offset by an equal amount of goodwill—an intangible asset which, under GAAP at that time could be amortized over periods up to 40 years. We were also aware that the transaction could have been alternatively structured under the pooling method of accounting, but that the benefits of goodwill would not have been available under pooling.

6. Glendale understood that the government's motivation in finding a merger partner or acquiror for Broward was to relieve FSLIC of its deposit insurance obligations, which would come due when Broward had to be liquidated. That insurance liability would have cost the government the difference between the marked-to-market value of Broward's assets and its liabilities. That difference was over $700 million in November of 1981. Thus, Glendale understood the government's strong incentive to

resolve Broward's liquidity problems by non-cash means. For its part, Glendale was concerned about maintaining its own healthy capital position, which comfortably exceeded regulatory requirements prior to the Broward merger. Even with Glendale's capital "cushion," however, if the goodwill resulting from the merger could not have been counted as capital, and the merger had still taken place, Glendale would have had a negative net worth immediately following the merger and for many years thereafter.

7. Without the government's agreement as to the use of purchase method accounting and 40-year amortization for goodwill, the Broward merger would never have been approved, let alone seriously considered, by Glendale's responsible directors and officers, including myself. When it entered into the SAA, Glendale understood the government to be committing itself to recognizing the goodwill acquired under purchase accounting as capital and committing itself to allowing that capital to be amortized over 40 years. Absent those commitments, Glendale itself would have been severely undercapitalized—indeed, insolvent—the day the merger was consummated.

8. The 40-year period of amortization was a key element of the agreement. We based our projections of the feasibility of the merger and its effect on Glendale's projected earnings on a 40-year amortization period for the goodwill. Any shorter amortization period would have resulted in very different projections and different earnings estimates, and would have required re-examination of the terms of the merger. Had the government insisted on a shorter amortization period, such as 20 years, Glendale would have insisted on greater amounts of direct assistance from the government. This is because a 20-year amortization period would have required larger write-

offs from capital every year, 1/20 rather than 1/40 of the total amount of goodwill. The difference between writing off 1/20 of $750 million each year ($37.5 million) and 1/40 of $750 million ($18.75 million) each year is significant, and would have affected earnings projections substantially.

9. Even with the government's agreement to allow amortization of goodwill over 40 years, Glendale sought, and received, certain other forms of assistance and assurances. Primary among these was the government's agreement to provide Glendale with protection against adverse interest-rate fluctuations, so long as Glendale made a similar commitment to the government should prevailing interest rates move lower, thus benefitting Glendale. The terms of this interest rate protection provision of the SAA were negotiated by Glendale based upon Glendale's projections referred to in paragraph 8 above, and in the context of the government's other principal assurances relating to purchase method accounting and 40-year amortization. Without the government's agreement to purchase method accounting there would have been no deal. Without the government's agreement to 40-year amortization, there may or may not have been a deal; but at the very least, the terms of financial assistance, including the terms of any interest-rate protection provision agreed to by the parties, would have been very different.

10. Although negotiations about these matters between Glendale and government representatives were not long, they were very focused. Purchase method accounting and 40-year amortization were, from the start, key elements of the agreement that was entered into with government representatives on November 19, 1981. Early in the negotiations, and later in a letter of November 10, 1981, Glendale's

accountants, Peat, Marwick, Mitchell & Co. ("Peat Marwick"), advised Glendale that, under GAAP, use of the purchase method of accounting would be appropriate for the Broward merger, and that the vast majority of the goodwill could be amortized over 40 years. In a letter of November 16, 1981, Exhibit 26 to Glendale's motion, FHLBB staff reviewing the provisional terms of agreement arrived at between Glendale and government representatives requested further information from Glendale to substantiate the reasonableness of the amount of goodwill to be booked and the amortization period of 40 years for that goodwill. In response, the next day, by letter of November 17, 1981 (included in Exhibit 11 to Glendale's motion), I provided the requested information. On the basis of this exchange, the transaction proceeded as negotiated.

11. It was my understanding at all relevant times, and still is my understanding, that the government committed itself in the SAA to recognize goodwill as capital and to allow it to be amortized over 40 years, and that it did so for its own economic benefit. I would not have permitted Glendale to enter into the merger with Broward had I thought that the SAA did not represent a binding commitment by the government as to those two critical elements of the transaction.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ David T. Hansen
David T. Hansen

Dated: September 3, 1991

UNITED STATES CLAIMS COURT

No. 90-772 C
(Chief Judge Loren Smith)

GLENDALE FEDERAL BANK, FSB, *Plaintiff,*

v.

UNITED STATES OF AMERICIA, *Defendant.*

AFFIDAVIT OF HAROLD B. SHORE IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY

I, HAROLD B. SHORE, depose and state as follows:

1. I am an attorney at law licensed to practice in the District of Columbia since 1961, and in the State of California since 1982. I am currently the Chief Corporate Counsel and Corporate Secretary of GLENFED, Inc., the holding company of Plaintiff in this action, currently known as Glendale Federal Bank, FSB ("Glendale"), as well as Corporate Secretary of Glendale. At the time of the negotiation and execution of the Supervisory Action Agreement ("SAA") and Glendale's merger with First Federal Savings and Loan Association of Broward County ("Broward"), I was General Counsel and Corporate Secretary of Glendale.

2. As Glendale's General Counsel, I was involved in the drafting and negotiation of the terms of the SAA and the Agreement of Merger with Broward. I

submit this affidavit in support of Glendale's motion for summary judgment as to liability. I am familiar with the matters set forth herein from my own personal knowledge and from a review of documents in Glendale's files as well as those produced by the United States in discovery.

3. With the assistance of outside counsel, I was involved in the concurrent drafting of both the Agreement of Merger and the SAA, and preparation and review of related transaction documents. We began work on the specific language of these agreements once representatives of Glendale and of the government had reached agreement on the general terms of the SAA, particularly financial terms of the deal and the government's commitment that Glendale could account for the merger using the purchase method, include the goodwill acquired in the merger as an asset for regulatory capital purposes, and amortize most of the goodwill over a forty-year period.

4. Glendale and Broward made their Agreement of Merger expressly conditional upon the government's execution of a SAA satisfactory to Glendale and approval of the deal without any conditions to which Glendale did not agree. The government was fully informed about and familiar with the terms of the Agreement of Merger.

5. After Glendale and the government reached agreement on the general terms of the SAA, in early November, 1981, we began drafting the contractual language while continuing negotiations of the specific provisions of the SAA. Successive drafts of the SAA were circulated among the representatives of Glendale and of the government. These drafts included some of the terms of the contract in their text and some in an attached two-page list of "supervisory" or

"regulatory" matters which had been agreed to by the parties as part of the deal. In early drafts, this list was entitled "Supervisory Waiver Matters" and in later drafts was called "Exhibit B, Supervisory Forbearance." All these drafts of the SAA contained the following provision as item number "6" on the list:

> Glendale's method of accounting for the transaction as a purchase, including periods for amortization of goodwill and discount on loans, to be approved.

Several of the successive drafts of the SAA are included as Exhibits 20-25 to Glendale's summary judgment motion. These exhibits are accurate photocopies of drafts prepared and circulated during the negotiations which were kept in the ordinary course of business in Glendale's legal files, for which I am responsible.

6. With a minor exception not relevant here, all of the matters which had been agreed to by the parties and included on the lists attached to the draft SAA's were included in the final contract, either in the text of the SAA or in the letters and resolutions issued contemporaneously with the SAA and incorporated therein. These terms were fundamental provisions of the contract between Glendale and the government.

7. Pursuant to the terms of the SAA, Glendale paid the government $18.24 million in cash by means of two wire transfers of $5.04 million and $13.2 million to the FSLIC. Accurate photocopies of printouts of the wire transfer confirmations from Glendale's files are included as Exhibit 27 to Glendale's summary judgment motion. I understand that it was and is Glendale's regular practice to retain these documents, generated at the time of making wire transfers, and

Glendale did so in the regular course of business. This was the only cash consideration which changed hands pursuant to the SAA, and it was an integral part of the bargained-for exchange between Glendale and the government.

8. Although the government's new capital regulations imposed following enactment of FIRREA have required Glendale to erase hundreds of millions of dollars of capital from its regulatory net worth, Glendale has complied with the regulatory capital requirements imposed by the regulations at all times on and after December 7, 1989, their effective date. In order to achieve such compliance, Glendale has incurred substantial costs it otherwise would not have incurred. The loss of the use of the bargained-for goodwill has also restricted Glendale's business opportunities, shaken the confidence of investors, hurt Glendale's competitive position, and harmed Glendale in other very real and tangible ways.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Harold B. Shore
Harold B. Shore

Dated: September 4, 1991

UNITED STATES CLAIMS COURT

No. 90-772 C
(Chief Judge Loren Smith)

GLENDALE FEDERAL BANK, FSB, *Plaintiff*,

v.

UNITED STATES OF AMERICIA, *Defendant*.

GLENDALE'S PROPOSED FINDINGS OF UNCONTROVERTED FACT

Plaintiff Glendale Federal Bank, FSB ("Glendale"), pursuant to RUSCC 56(d)(1), submits these Proposed Findings of Uncontroverted Fact in support of Glendale's Motion for Summary Judgment as to Liability filed herewith. Citations below are to pages in Glendale's Memorandum in Support of Motion for Summary Judgment as to Liability. Those pages, in turn, provide the Court with citations to specific supporting Exhibits and Affidavits.

1. Glendale is a federally chartered savings bank with over $20 billion in assets. Until 1989, Glendale was a federally chartered savings and loan association.

2. Effective November 19, 1981, Glendale entered into a transaction with the United States government relating to Glendale's acquisition of First Federal Savings and Loan Association of Broward County ("Broward"). (*E.g.*, pp. 25-29). The terms of Glendale's transaction with the government are set forth in a "Supervisory Action Agreement" dated November 19, 1981 ("SAA"), and in various contemporaneous documents including Federal Home Loan Bank Board

Resolutions Nos. 81-710, 81-711 and 81-712, a "forbearance letter" attached as Exhibit B to the SAA and an Agreement of Merger dated November 12, 1981 between Glendale and Broward. (*E.g.*, pp. 29-33, 40-44). The SAA was executed by Glendale and the Federal Savings and Loan Insurance Corporation ("FSLIC"), an agency of the United States operated by the FHLBB, also an agency of the United States. (*E.g.*, pp. 2-4, 25-29).

3. At the time of Glendale's transaction with the government, Broward had been losing money for many months at rates ranging from $4-7 million per month, and was rapidly heading towards failure. (pp. 10-11). As of November 19, 1981, Broward had a net worth at market value of negative $734,660,000. (*E.g.*, p. 10). If Broward had been allowed to fail and had been liquidated, the government, pursuant to FSLIC's deposit insurance obligations, would have had to satisfy Broward's massive excess liabilities and pay other associated liquidation costs. (*E.g.*, pp. 11-14). As of November 19, 1981, the government estimated the liquidation costs for Broward to be in excess of $783 million. (*E.g.*, pp. 11-12).

4. At the time of Glendale's transaction with the government, FSLIC's deposit insurance fund was running out of cash, and the government therefore was seeking non-cash (or reduced cash) solutions for failing savings and loans like Broward. (pp. 8-10). One non-cash (or reduced cash) technique actively promoted by the government at the time was the "purchase method" of accounting. (pp. 9, 12-15).

5. In the course of negotiations with Glendale over terms of the SAA transaction, the government considered other alternatives for avoiding the failure and liquidation of Broward. (*E.g.*, pp. 25-26). The government determined, however, that no other

merger partner or other solution was available that was as favorable to the government as the terms ultimately agreed to with Glendale. (pp. 25-26).

6. Glendale's merger with Broward became effective on the date of the SAA, and was effectuated pursuant to the Agreement of Merger between Glendale and Broward which was both conditioned upon and incorporated into the SAA and was approved by the FHLBB. (pp. 33-34, 18).

7. In exchange for Glendale's merger with Broward and assumption of Broward's excess liabilities, Glendale and representatives of FSLIC and the FHLBB negotiated and agreed that Glendale would use the purchase method to account for the transaction; that the $734,660,000 in resulting goodwill could be used as an asset for regulatory capital purposes in accordance with Generally Accepted Accounting Principles ("GAAP"); and that most of the goodwill would be amortized over forty years (with a small portion being amortized over 12 years). (pp. 14-33, *passim*).

8. Both parties to the transaction specifically understood that the terms regarding the inclusion of goodwill in regulatory capital and the amortization period for goodwill were fundamental provisions of the deal. (pp. 14-33, *passim*). The FSLIC Director stated at the time that "the major elements of this proposal involve the use of purchase accounting and an FSLIC guarantee." (p. 27). Had the government not agreed to allow Glendale to account for goodwill in this manner, Glendale would not and could not have entered into the transaction. (*E.g.*, pp. 20-21). Moreover, without the terms as to goodwill, the government as regulator would not have approved it. (*E.g.*, p. 21). If Glendale had assumed Broward's excess liabilities without including offsetting goodwill

in capital, it would have rendered Glendale immediately insolvent and subject to governmental takeover. (pp. 20-21).

9. The government's agreements concerning goodwill and its amortization period served, in place of cash assistance, to offset Broward's excess tangible liabilities of $734,660,000 and thereby make the transaction feasible for Glendale and for the government. (*E.g.*, pp. 3-4, 9, 12-14). The government recognized at the time it ratified the SAA that, by using the commitments as to goodwill instead of cash or other assistance, it would save at least $250,000,000. (*E.g.*, pp. 13-14). The government also recognized at the time that the transaction with Glendale saved it over three-quarters of a billion dollars in liquidation costs it would have had to pay if no merger partner had been induced to acquire Broward, and Broward instead had to be liquidated. (*E.g.*, pp. 4, 13-14). At the meeting where the FHLBB ratified the SAA transaction, the FSLIC Director stated his judgment that "I don't think we'll ever see a deal like this one again in terms of its benefit to the FSLIC." (pp. 3, 27).

10. Pursuant to the SAA, Glendale paid an additional $18.24 million in cash directly to the government. (*E.g.*, p. 34). This was the only cash that changed hands pursuant to the SAA. (p. 34, *passim*). The terms of the SAA pursuant to which the $18.24 million was paid were negotiated and agreed to in the context of—and dependent upon—the government's related commitments concerning goodwill and its amortization period. (pp. 34-35). Absent those commitments, the financial terms of the SAA, including the terms pursuant to which the $18.24 million was paid, would have been different. (*E.g.*, pp. 34-35).

11. Both parties recognized and honored their commitments under the SAA, including the provisions

regarding goodwill and its amortization, until 1989. (pp. 33-36). In 1989, the government refused to continue to recognize as a capital asset the goodwill Glendale acquired in its merger with Broward, requiring Glendale immediately to write-off a large portion and phase-out the rest of the goodwill. (pp. 36-39). The government further refused to continue to allow Glendale to amortize the remaining goodwill over the 40-year period agreed between the parties. (pp. 36-39).

12. As a direct result of the government's failure to honor its agreements concerning goodwill and its amortization, Glendale has suffered significant damages and other harm. (*E.g.*, pp. 37-38). Glendale has had to implement costly policies and practices to compensate for the excluded goodwill. (p. 38). In addition, the exclusion of goodwill has restricted Glendale's business opportunities, shaken the confidence of investors, hurt Glendale's competitive position, and harmed Glendale in other ways. (p. 38).

Respectfully submitted,

/s/ Paul G. Gaston
PAUL G. GASTON
Spriggs & Hollingsworth
1350 I Street, N.W.
Suite 900
Washington, D.C. 20005
(202) 898-5800

Counsel of Record for
GLENDALE FEDERAL
BANK, FSB

Of Counsel:

JERRY STOUCK
DANIEL M. PRESS
Springs & Hollingsworth
1350 I Street, N.W.
Suite 900
Washington, D.C. 20005
(202) 898-5800

September 13, 1991

Supreme Court of the United States

No. 95-865

UNITED STATES, PETITIONER,

v.

WINSTAR CORPORATION, ET AL.

[Filed Jan. 19, 1996]

ORDER ALLOWING CERTIORARI

The petition herein for a writ of certiorari to the United States Court of Appeals for the Federal Circuit is granted. The brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 1, 1996. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday March 29, 1996. A reply brief, if any, is to be filed pursuant to Rule 25.3. Rule 29.2 does not apply.